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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1265 ~~889~~ 571 268

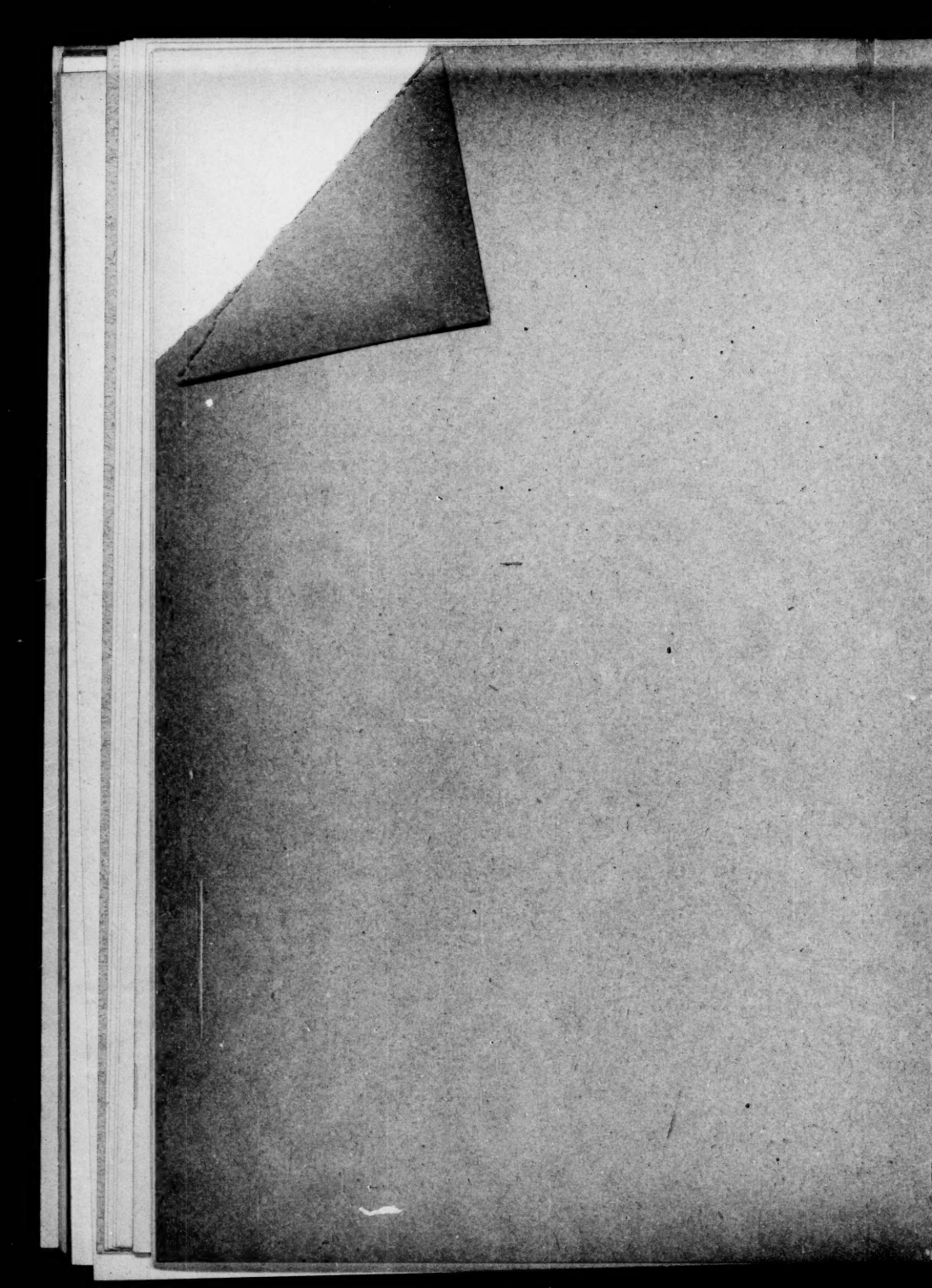
WILLIAM J. WILSON, PLAINTIFF IN ERROR,

vs.

WILLIAM S. EVERETT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED OCTOBER 21, 1887.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1268.

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WILLIAM S. EVERETT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

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Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 28th day of January, A. D. 1886, came William S. Everett and James M. Robinson, by Wells, Macon and McNeal, Esqrs., their attorneys, and filed in said court their complaint and sued out of said court a writ of summons against William J. Wilson.

And the said complaint is in words and figures as follows, to wit:

Complaint.

In the Circuit Court of the United States for the District of Colorado.

WILLIAM S. EVERETT and JAMES M. ROBINSON, Plaintiffs,

vs.

WILLIAM J. WILSON, Defendant.

The plaintiffs, complaining of the said defendant, say that plaintiffs are citizens of the State of Illinois; that defendant is a citizen of the State of Colorado; that the matter in dispute herein exceeds, exclusive of costs, the sum and value of five hundred dollars.

And for a cause of action plaintiffs say that heretofore, to wit, on the first day of November, A. D. 1885, defendant became and was indebted to plaintiffs in the sum of sixty-five thousand dollars on an account for services by plaintiffs performed at the request of defendant at the city of Chicago, in the State of Illinois, and at the said district of Colorado, and at London, England, between the first day of June, 1883, and the first day of November, A. D. 1885, in and about the sale of certain lands and certain horned cattle and other personal property of defendant; that defendant hath not paid the said sum of money nor any part thereof.

Wherefore plaintiffs demand judgment against the said defendant for the sum of sixty-five thousand dollars and their costs.

(Signed) WELLS, MACON & McNEAL,
Plaintiffs' Attorneys.

(Endorsed:) 1893. William S. Everett and James M. Robinson *vs.* William J. Wilson. Complaint. Filed Jan. 28, 1886. (Signed) Edward F. Bishop, clerk. Wells, Macon & McNeal, att'ys for pl'ffs.

And the said summons is in words and figures as follows, to wit:

Summons.

3 *Complaint. Filed in the Clerk's Office this 28th Day of January, A. D.* 1886.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States for the District of Colorado.

WILLIAM S. EVERETT and JAMES M. ROBINSON, Plaintiffs,

versus

WILLIAM J. WILSON, Defendant.

The President of the United States of America to William J. Wilson, Greeting:

You are hereby notified that an action has been brought in said court by William S. Everett and James M. Robinson, plaintiffs, against you, as defendant, to recover the sum of $65,000.00 due from you, the said defendant, to the said plaintiffs on an account for services performed by plaintiffs at defendant's request at Chicago, Illinois, at the district of Colorado, and at London, England, between June 1st, 1883, and November 1st, 1885, in and about the sale of certain lands, etc., and for the costs of this suit, as more fully set forth and described in the complaint filed herein and to which reference is here made.

You are hereby required to appear and demur or answer to the complaint filed in said action in said court within ten days (exclusive of the day of service) after this summons shall be served on you, if such service shall be made within the county of Arapahoe; otherwise within forty days from the day of service; and if
4 you fail so to do the said plaintiffs will take judgment against you by default, according to the prayer of the said complaint, for said sum of $65,000.00 and costs.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in said district, this 28th day of January, A. D. 1886, and of the Independence of the United States the 110th year.

[Seal Cir. C't U. S.]

(Signed) EDWARD F. BISHOP, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Proof of Service.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

DENVER, *Jan'y 28th, A. D.* 1886.

I hereby certify that I received the within writ on the 28th day of January, A. D. 1886, and that I have personally served the same upon the said defendant, William J. Wilson, by delivering to him personally a true copy of the within writ at Denver, county of Arapahoe, on the 28th day of January, A. D. 1886.

This writ therefore returned executed as the law directs this 28th day of January, A. D. 1886.

(Signed) WALTER A. SMITH, *Marshal,*
By E. F. DEAN, *Deputy Marshal.*

5 (Endorsed:) Gen. No. 1893. Circuit court of the United States for the district of Colorado. Wm. S. Everett *et al.*, plaintiffs, *versus* Wm. J. Wilson, defendant. Summons. Filed this 28 day of Jan'y, A. D. 1886. (Signed) Edward F. Bishop, clerk, by F. W. Tupper, deputy clerk. Wells, Macon & McNeal, of Denver, attorneys for plaintiffs.

And afterwards and on, to wit, the 4th day of February, A. D. 1886, came the said defendant, by Patterson and Thomas, Esqrs., his attorneys, and filed in said court and in said cause his demurrer to the complaint herein.

And the said demurrer is in words and figures as follows, to wit:

Demurrer.

In the Circuit Court of the United States for the District of Colorado.

WILLIAM S. EVERETT and JAMES M. ROBINSON, Plaintiffs,

vs.

WILLIAM J. WILSON, Defendant.

Comes now the said defendant and demurs to the complaint herein for the reason that the same does not state facts sufficient to constitute a cause of action.

(Signed) PATTERSON & THOMAS,
6 *Att'ys for Defendant.*

Post office address, Denver, Colo.

(Endorsed:) 1893. U. S. circuit court, at Denver. Wm. S. Everett and James M. Robinson *vs.* William J. Wilson. Demurrer to complaint. Filed Feb. 4, 1886. (Signed) Edward F. Bishop, clerk. Patterson & Thomas, def't's att'ys.

And afterwards and on, to wit, the 5th day of May, A. D. 1886, the same being one of the regular juridical days of the May term, A. D. 1886, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order. Demurrer Overruled.

WILLIAM S. EVERETT and JAMES M. ROBINSON
vs.
WILLIAM J. WILSON. } 1893.

Action on an account.

At this day come the said plaintiffs, by E. T. Wells, Esq., their attorney, and the said defendant, by T. M. Patterson, Esq., his attorney, also comes.

And the demurrer of the said defendant to the complaint herein coming on now to be heard is argued by counsel, and
7 the court being now sufficiently advised in the premises, it seemeth to the court here that the said complaint is sufficient in law, and so the said demurrer is overruled.

And afterwards and on, to wit, the 6th day of May, A. D. 1886, came the said plaintiffs, by their attorneys aforesaid, and filed in said court and in said cause a certain bill of particulars.

And the said bill of particulars is in words and figures as follows, to wit:

Bill of Particulars.

In the Circuit Court of the United States for the District of Colorado.

WILLIAM S. EVERETT & JAMES M. ROBINSON
vs.
WILLIAM J. WILSON.

Robert T. McNeal, being first duly sworn, says on oath that on this 5th day of May, A. D. 1886, he delivered a true copy of the within account to Thomas M. Patterson, one of defendant's attorneys.

(Signed) R. T. McNEAL.

Subscribed & sworn to before me, at Arapahoe county, Colorado, this May 6th, A. D. 1886.

[Notarial Seal.]

(Signed) HARRY C. PORTER,
8 *Notary Public, Arapahoe County, Colorado.*

Bill of Particulars.

In the Circuit Court of the United States for the District of Colorado.

WILLIAM S. EVERETT, JAMES M. ROBINSON,

vs.

WILLIAM J. WILSON.

William J. Wilson to William S. Everett and James M. Robinson, Dr.

To services rendered by the said Everett and Robinson between June 1st, 1883, and November 1st, 1885, at your request in and about negotiating a sale for your behalf to the New United States Cattle Ranch Company, Limited, of London, England, of the Circle ranch, located on the Republican river and its tributaries, in the States of Colorado, Kansas, and Nebraska, with the appurtenances, and the cattle and horses which were, on or about the 14th day of December, 1883, upon the range belonging to or connected with the said Circle ranch, and the buildings, dwellings, branding irons, books, and records of said Circle ranch, and the saddles, bridles, and harness connected with or belonging to the said ranch, two patented horse hay-rakes then upon the said ranch, and the other cattle or property belonging to or connected with the said Circle ranch
9 on the 14th day of December, 1883, aforesaid, and the water rights and other rights and privileges pertaining to the said ranch, $65,000.00.

Received a copy of the above bill of particulars this 5th day of May, 1886.

——— ———,
Attorney for Defendant.

(Endorsed:) No. 1893. Wm. S. Everett *et al. v.* Wm. J. Wilson. Bill of particulars. Filed May 6th, 1886. (Signed) Edward F. Bishop, clerk.

And afterwards and on, to wit, the 8th day of May, A. D. 1886, came the said plaintiffs, by their attorneys aforesaid, and filed in said court and in said cause their supplemental bill of particulars.

Order. Defendant to Answer.

WILLIAM S. EVERETT and JAMES M. ROBINSON
vs.
WILLIAM J. WILSON. } 1893.

Action on an account.

13 At this day come the said plaintiffs, by Thomas Macon, Esq., their attorney, and the said defendant, by T. M. Patterson, Esq., his attorney, also comes.

And thereupon, on motion of the said defendant, the said plaintiffs now here in open court consenting thereto, it is ordered by the court that the said defendant answer herein by or before the 24th instant, as he shall be advised.

And afterwards and on, to wit, the 22nd day of May, A. D. 1886, came the said defendant, by Patterson and Thomas, Esq'r's, his attorneys, and filed in said court and in said cause his answer to the complaint herein.

And the said answer is in words and figures as follows, to wit:

Answer.

UNITED STATES OF AMERICA, } *ss:*
District of Colorado,

In the Circuit Court of the United States in & for said District.

WILLIAM S. EVERETT *et al.*, Plaintiffs,

vs.

WILLIAM J. WILSON, Defendant.

14 Comes now the above-named defendant, William J. Wilson, by his attorneys, Patterson & Thomas, and, for answer to the complaint herein, says:

He denies that on the first day of November, A. D. 1885, or at any other time he became or was indebted to the plaintiffs or to either of them in the sum of sixty-five thousand dollars or in any other sum on an account for services for plaintiffs performed, at defendant's request or in any manner, at the city of Chicago, in the State of Illinois, and at the said district of Colorado and at London, England, or at any other place, between the first day of June, 1883, and the first day of November, A. D. 1885, or at any other time, in and about the sale of certain lands and certain horned cattle and other personal property of defendant, or in or about the sale of any other property or thing whatsoever.

And, answering the supplement to plaintiffs' bill, he further denies that said alleged services were rendered under an oral or other employment of plaintiffs by defendant by which plaintiffs were to receive for their commissions in the first instance five thousand dollars or any other sum and all that the property should sell for over two hundred and twenty-five thousand dollars or any other sum. He denies that this employment of plaintiffs by defendant was made in the summer of 1883 or at any other time, and he denies that the same was reiterated and renewed in Chicago about February, 1884, or at any other time. He denies that by a subsequent or any arrangement the defendant agreed to pay plaintiffs the further sum of ten thousand dollars or any other sum whatsoever. He further denies that any services were performed or trips made or correspondence or negotiations had by the said plaintiffs or either of them for or in behalf of defendant in and about the alleged
15 sale of said lands, horned cattle, and other personal property of the defendant.

Wherefore defendant prays that he be hence dismissed with his judgment, for costs, and all other relief.

(Signed) PATTERSON & THOMAS,
Att'ys for Defendant.

(Endorsed:) 1893. U. S. circuit court. William S. Everett *et al. vs.* William J. Wilson. Answer. Filed May 22, 1886. (Signed) Edward F. Bishop, clerk. Patterson & Thomas.

And afterwards and on, to wit, the 15th day of January, A. D. 1887, the same being one of the regular juridical days of the November term, A. D. 1886, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Death of Plaintiff Robinson Suggested.

WILLIAM S. EVERETT *et al.*
vs.
WILLIAM J. WILSON. } 1893.

Action on an account.

At this day comes the said plaintiff, William S. Everett, by R. T. McNeal, Esq., his attorney, and suggests to the court here that since the last term of the court the said plaintiff, James M. Robinson, hath departed this life, whereby this action hath abated as to him, the said James M. Robinson.

16 And afterwards and on, to wit, the 18th day of January, A. D. 1887, the same being one of the regular juridical days of the November term, A. D. 1886, of said court—present, the Honorable

Moses Hallett, district judge—the following further proceedings was had and entered of record in said court and in said cause, to wit:

Order. Jury Trial.

WILLIAM S. EVERETT, Surviving Plaintiff,
vs.
WILLIAM J. WILSON. } 1893.

Action on an account.

At this day comes the said plaintiff, by J. G. Taylor, Esq., his attorney, and the said defendant, by T. M. Patterson, Esq., his attorney, also comes.

And thereupon comes a jury, to wit, John Gray, J. F. Tucker, A. Morse, J. E. Benjamin, Joseph Coykendall, Day B. Hayt, James F. Benedict, Frank Kratzer, Henry A. Holme, Charles B. Kountze, James Cowie, Fred. R. Baker, twelve good and lawful men, and they are duly selected and tried, impaneled, and sworn to well and truly try the issues herein joined and a true verdict render according to the evidence.

And thereupon comes the evidence, the hearing of which is continued to the hour of adjournment.

And the said jurors, being now each duly cautioned by the court not to converse among themselves or with others touching this cause or the matters at issue herein or the evidence heard or any part thereof, nor to listen to such conversation of others, are per-
17 mitted to separate to meet the court at its next income.

And afterwards and on, to wit, the 19th day of January, A. D. 1887, the same being one of the regular juridical days of the November term, A. D. 1886, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Trial Continued.

WILLIAM S. EVERETT, Surviving Plaintiff,
vs.
WILLIAM J. WILSON. } 1893.

Action on an account.

At this day come again the said parties, by their attorneys, respectively.

And the said jurors being now all here present and in the jury-box, the hearing of the evidence herein is resumed and continued to the hour of adjournment.

And the said jurors, being now each duly cautioned by the court not to converse among themselves or with others touching this cause or the matters at issue herein or the evidence heard or any part

thereof, nor to listen to such conversation of others, are permitted to separate to meet the court at its next incoming.

18 And afterwards and on, to wit, the 20th day of January, A. D. 1887, the same being one of the regular juridical days of the November term, A. D. 1886, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Trial Continued.

WILLIAM S. EVERETT, Surviving Plaintiff,
vs.
WILLIAM J. WILSON. } 1893.

Action on an account.

At this day come again the said parties, by their attorneys, respectively.

And the jurors heretofore impaneled and sworn in this cause being now all here present and in the jury-box, the hearing of the evidence herein is resumed.

And the said jurors, having heard the evidence produced herein and the instructions of the court, retire to their room under charge of a sworn bailiff to consider of their verdict.

And afterwards and on, to wit, the 21st day of January, A. D. 1887, the same being one of the regular juridical days of the November term A. D. 1886, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Verdict.

19 WILLIAM S. EVERETT, Surviving Plaintiff,
vs.
WILLIAM J. WILSON. } 1893.

Action on an account.

At this day come again the said parties, by their attorneys, respectively, and thereupon come again the said jurors and on their oaths do say they find for the plaintiff in the sum of ten thousand dollars ($10,000).

And afterwards and on, to wit, the 22nd day of January, A. D. 1887, the same being one of the regular juridical days of the November term, A. D. 1886, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Leave to Submit Question to Jurors.

WILLIAM S. EVERETT, Surviving Plaintiff,
vs.
WILLIAM J. WILSON. } 1893.

Action on an account.

At this day come again the said parties, by their attorneys, respectively, and thereupon the said plaintiff prays leave of the court to submit a question to the jurors heretofore impaneled and sworn in this cause, which is by the court allowed him; and the said jurors, being now again all here present and in the jury-box, the following
20 interrogatory, presented by the said plaintiff, is asked by the court of them, to wit: "Did you include in your verdict the plaintiff's claim for any excess over the sum of $225,000 denominated in the evidence the surplus or profits?" To which the said jurors, by James F. Benedict, their foreman, answer and say: "Our understanding is that Mr. Wilson never received anything in excess of $225,000.00." And it is ordered by the court that the said question and the answer thereto be entered of record in connection with the verdict of the jury on yesterday returned into court in this cause, for further consideration, as occasion may arise.

And afterwards and on, to wit, the 25th day of January, A. D. 1887, came again the said defendant, by his attorneys aforesaid, and filed herein his motion for a new trial of the issues herein joined.

And said motion for a new trial is in words and figures as follows, to wit:

Motion for a New Trial.

In the Circuit Court of the United States for the District of Colorado.

WILLIAM S. EVERETT *et al.*, Plaintiffs,

vs.

WILLIAM J. WILSON, Defendant.

21 Comes now the above-named defendant, William J. Wilson, and moves the court for a new trial in the above-entitled cause for the following reasons, to wit:

1. The court erred in admitting improper, irrelevant, and incompetent testimony.

2. The court erred in refusing to admit competent, relevant, and pertinent testimony in behalf of the defendant in said cause.

3. The court erred in giving to the jury irrelevant, incompetent, and improper instructions, each and all of which were prejudicial to the lawful rights of the defendant.

4. The court erred in refusing to instruct the jury as requested by the defendant.

5. The verdict of the jury is contrary to law.
6. The verdict of the jury is contrary to the evidence.
7. The verdict of the jury is not sustained or warranted by the testimony.
8. The verdict of the jury is against the great weight and preponderance of the testimony.
9. And for other good and sufficient reasons.

(Signed) PATTERSON & THOMAS,
Attorneys for Defendant.

(Endorsed:) 1893. U. S. circuit court at Denver. William S. Everett *et al. vs.* William J. Wilson. Motion of defendant for new trial. Filed Jan. 25, 1887. (Signed) Edward F. Bishop, clerk. Patterson & Thomas, for defendant.

22 And afterwards and on, to wit, on the 3rd day of May, A. D. 1887, the same being one of the regular juridical days of the May term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Judgment.

WILLIAM S. EVERETT } 1893.
vs.
WILLIAM J. WILSON. }

Action on an account.

At this day comes the said plaintiff, by R. T. McNeal, Esq., his attorney, and the said defendant by T. M. Patterson, Esq., his attorney, also comes.

And the motions, respectively, of the said plaintiff and the said defendant for a new trial of the issues herein joined having heretofore come on to be heard, and having been argued by counsel and by the court taken under advisement, and the court being now sufficiently advised in the premises, it is ordered by the court, for good and sufficient reasons to the court appearing, that the said motions and each of them be denied.

Wherefore it is ordered by the court that judgment be entered herein upon the verdict of the jury in favor of the said plaintiff and against the said defendant for the sum of ten thousand dollars ($10,000) damages and the said plaintiff's costs, to be taxed.

23 And thereupon and on the same day, to wit, the 3rd day of May, A. D. 1887, judgment was duly entered against the said defendant in the judgment book of said court in pursuance of the statutes and rules of court.

Q. What was the occasion of your meeting; was it accidental?

A. No, sir; he was brought there by Mr. Robinson—J. M. Robinson, the plaintiff—my coplaintiff.

Q. Did you have any business conversation or any conversation leading to any business transaction?

A. We had; yes, sir.

Q. Narrate to the jury what the conversations were between you at the time.

A. The first time—this was in August 1883—it was in regard to the sale of his ranch property, known as the Circle ranch, located, as represented by him, partly in Colorado, partly in Kansas, and partly in Nebraska.

Q. Narrate, if you please, what was done and what was said in reference to your taking hold of it.

A. I had been in Europe some time previous to that on other business, but whilst there had received a letter from a gentleman named Reynolds—James Reynolds—in which letter he had
27 described very fully a large ranch property.

Q. Leave the Reynolds matter out, if you please.

A. I was going—I made negotiations—we had a contract with him, and that contract for the sale of this property I had read to Mr. Wilson, and previous to that had read it to Mr. Robinson. I undertook to negotiate the property and entered into a negotiation. When I returned to America I found the property was not as represented, and, among others, I got Mr. Robinson to furnish a property that would come very nearly to the representations made in that contract—the Reynolds contract—and the conversation with Mr. Wilson started upon that matter, and he then gave me a written description of the ranch, the acreage of freehold land and the land enclosed in fence, the range outside of it, the number of cattle he had, the number of horses, the amount of cattle he had sold the year previous, the number of beef cattle he had on hand at his place, comprising a property which I believed I could accept in lieu of the one I had been attempting to place. The gentleman did not own any such property; had no such property under control as was represented in that letter. That then led to the negotiations, and Mr. Wilson stated that he wanted $225,000 for it—for his property. I wanted him then to designate a commission. I wanted him to give me a power of attorney to negotiate a contract for the sale of his property. He declined to do that. I wanted him to give a bond on this property. He declined to do that, but he said he would add five thousand dollars to it, which would be two hundred and thirty thousand dollars, and would give five thousand dollars commission. Then I explained to him as well as I could, as I understood the character of the English market, that the English people
28 based the value of the property upon what it would yield, and from his representation of the property having made ninety-six thousand dollars the year before from the sale of cattle, and having a thousand head that were ready for market; that two hundred and twenty-five thousand dollars was a very small price; that it could be sold just as readily for a great deal more; that ten-

per cent. dividend on any property was a fair investment; that investors did not object to taking hold of any such property. Mr. Robinson stated that he had sold Mr. Wilson's cattle; they were of good grade; also purchased bulls for him, so I was led to believe they were of good grade. We fixed the value upon — ten per cent.— that is, a thousand head at forty dollars a head amounting to so much. I said the English promoters would fix a valuation. We finally agreed upon allowing myself and Mr. Robinson fifty thousand dollars as a profit in addition to the five thousand dollars commission he agreed we should have, and on the strength of that I drew up a contract then, at the same time, between himself, myself, and Mr. Robinson, in which the purchase price was given at two hundred and thirty thousand dollars, five thousand dollars, and an option, as the counsel has said, for sixty days; and then also a further contract was drawn up for the inspection of the promoters— founders of this English company. I understood a company had already been formed and the money was ready to be paid over whenever the property was presented, coming anything near the terms and specifications of the contract on which they had obtained subscriptions and issued stock. In that contract—the contract for two hundred and seventy-five thousand dollars—we made no provision whatever for the founders or promoters of the company, and it was sent over and a new contract was framed by the English solicitors for the company and returned to us for Mr. Wil-
29 son to sign. When that contract was received by myself either myself or Robinson either telegraphed or wrote to Wilson to come to Chicago, we were ready to close negotiations. That, I think, was in October, perhaps, of the same year. When Mr. Wilson came to the office I presented the contracts for his inspection; he looked them over. One was a promoter's contract for the company, the valuation being fixed at four hundred and ten thousand dollars. He, however, asked until the next day and I let him take the contract with him and he returned the next morning, stating that he had met a lawyer, a gentleman he knew, from the West. I think he gave his name as Tankersley, and said that he had examined the contract very carefully and found and advised him not to sign it; so he declined to sign it. He remained there a couple of days. I was called away on business in Texas, to be gone almost a month, and what took place between Mr. Robinson and Mr. Wilson and my son I don't know anything about, except what was told me afterwards. However several cable dispatches were sent from London to my office urging this matter; first urging the contract to be signed by Mr. Reynolds; when I found that could not be done, then urging Mr. Wilson to sign this. It seemed the members, the subscribers to the stock on the other side, were getting very much dissatisfied, and, in order to prevent the thing from falling to pieces, urged it up all they could. When I returned from Texas I found matters had not progressed very much. It was deemed advisable for me to come out and see Mr. Wilson, which I did. I came out in December. I had drawn another contract in a form which I thought would, perhaps, be relieved of the objectionable features

that Wilson objected to in the contract sent me, but Mr. Wilson did not sign that. We went to a lawyer named Hughes, here; Mr. Hughes found no fault with it; seemed to think it all right
30 and clear. That contract did not change the purchase price, did not change the number of cattle, made no material changes except some changes which, perhaps, were beneficial to the founders of the company on the other side, but did not affect the price at all nor the payments. We talked awhile about it, and finally we met Mr. Patterson and the contract was drawn up in Mr. Patterson's office mainly by himself. I was there. Mr. Wilson was present. We discussed over all the phraseology, terms, and conditions in it very thoroughly. It was written very slowly and with great care and finally completed and signed by Mr. Wilson, and that contract I sent to England to these gentlemen I was then negotiating with; and, having received that, they came over to examine the property and close the purchase. They came over and the purchase was closed. They took possession, paid the purchase price agreed upon, the cash purchase price, and gave, as the counsel stated in his opening argument, a chattel mortgage on the realty to secure the unpaid portion of the purchase price.

Mr. TAYLOR to Mr. Patterson: There is what we call the first contract, sir; marked for identification Ex'b. A and read in evidence as follows:

EXHIBIT A.

CHICAGO, *Aug.* 17, '83.

I hereby agree to sell to William S. Everett and J. M. Robinson or their nominees the ranch known as Circle ranch, located on Republican river at a point where the States of Colorado, Kansas, and Nebraska join, at and for the sum of two hundred and thirty — ($230,000) dollars, less five thousand ($5,000) dollars allowed said Everett and Robinson for commissions, said sale to embrace
31 said ranch with cattle and horses and everything that thereto belongs, and the said parties to have the refusal of said property for sixty days from this date and such longer time as may be necessary to close said sale, provided that within said sixty days there is fair prospect of a sale being made satisfactory to me.

(Signed) W. J. WILSON.

Q. I understand you to say at the time this was signed there was another contract signed which was forwarded to England?

A. Yes, sir; the same date.

Q. Have you got that?

A. I have not; I furnished a copy which I think you gave Mr. Patterson awhile ago.

Q. The original was sent to England?

A. Yes, sir.

Q. That was with reference to the same sale that was mentioned in here?

A. Yes, sir.

—. (Handed paper and asked.) Look at that and see if that is a copy of the contract?

A. Yes, sir. At the time this contract was drafted and signed there was one kept in the office, which is this one. I think we furnished Mr. Wilson one at the same time, perhaps Mr. Robinson, but the original was sent to London. They were all compared and found to be exactly alike.

Mr. Taylor reads the paper spoken of by witness, as follows:

32 EXHIBIT "B."

Memorandum of agreement made this 17th day of August, A. D. 1883, between William J. Wilson, of Denver, Colorado, U. S. A., and William S. Everett, attorney-at-law, of Chicago, Illinois, U. S. A., as the duly authorized agent to negotiate a sale of the property herein described for and on behalf of the said William J. Wilson, represented hereinafter as the guarantor, of the first part, and Thomas Fison Smith, of 54½ Old Broad street, E. C., London, England, as trustee for and on behalf of a limited company proposed to be formed and registered under the name of the "New United States Cattle Ranch Company, Limited," herein known as the purchaser, of the second part, and Arthur Robert Martin, of 63 Queen Victoria street, and John Potter Wilkes, of 54½ Old Broad street, and Louis Edward Potter Wilkes, of same number, all of London, England, of the third part.

1. The said agent and guarantor agree to sell the ranch known as "Circle ranch," located on the Republican river and several of its tributaries, in the States of Colorado, Kansas, and Nebraska, at a point where the three States join in the northeast of Colorado, U. S. A.

2. The said ranch contains one hundred and thirty-five (135) square miles of good pasture land, all fenced in with a fence of good solid wood posts and three wires (barbed), and the entrances with iron gates.

3. This ranch contains nine miles of frontage on the Republican river and fifteen (15) miles back from said river, through which flow several tributaries to said river, the land along the said river and streams (tributaries) all being held in freehold title from the Government of the United States of America.

33 4. Also all buildings, dwellings, branding irons, wagons, books, and records of said ranch, and all cattle thereon or connected therewith under the brand of said cattle ranch, which the books show to be about nine thousand (9,000), more or less, which herd is well graded American stock, free from Texas or Spanish pedigree, and which herd has thirty full-blooded Durham bulls and one hundred and thirty-five (135) high-graded Durham bulls; also two hundred (200) American horses, most of which are trained saddle horses, together with saddles, bridles, and several sets of harness; also two mowing machines and patented horse hay-rakes.

5. The guarantor makes the following statement of facts, which shall form part of this agreement on his part, to wit:

a. That in connection with this ranch and outside of that part under fence there is a pasture range of not less than thirty miles in extent in every direction, except on the south side, which is one hundred and fifty (150) miles or thereabouts, which range has been used by the owners of this ranch for seventeen years, and is now used as pasture land for the present herd hereinafter referred to.

b. That said range and ranch are well watered, well sheltered, and covered with gramma, buffalo, blue-stem, and bunch grasses, and furnishes good pasture the year round.

c. That said ranch has never been infected with disease of any sort, the cattle always being in a perfectly healthy condition.

d. The cattle sold from this range from the year A. D. 1882 amounted to ninety-six thousand dollars ($96,000), and that many of them weighed over one thousand three hundred pounds each.

e. That the range, outside of that portion enclosed by fence, before referred to will pasture over twenty thousand head of
34 cattle without interfering with neighboring ranches or using that portion now under fence.

f. The land along the streams and river is covered with timber.

g. No cattle have been sold this year, and one thousand head (1,000) or thereabouts are now ready for market and will be reserved for the purchaser.

6. This ranch has been owned and operated by the present owner, the said William J. Wilson, for the past six years, and the business has been managed by men of experience, who have kept books of record of number of cows, bulls, calves dropped each year, and cattle sold. The cattle will be sold and all pertaining to this ranch upon inspection thereof by the purchaser and an actual count of horses, cattle, and an inventory of all property thereunto belonging.

7. A good title will be given to the purchaser for all realty and all cattle, horses, and other property connected with and belonging to this ranch and possession thereto upon satisfactory completion of sale and purchase under this agreement at and for the consideration of two hundred and seventy-five thousand dollars ($275,000), lawful money of the United States, one-half of which sum of $275,000 shall be cash and the remaining one-half, or one hundred and thirty-seven thousand and five hundred dollars ($137,500), in one year from the date of purchase, to be secured by mortgage on said range at seven per cent. (7 per cent.) interest.

8. It is also agreed that Edwin Wilson, an experienced cattle raiser, will, if desired by the purchaser, give one or more year's time in the management of the ranch at a reasonable price; that the guarantor and vendor, William J. Wilson, will at any time
35 render such assistance as may be necessary to the successful management of the business of this ranch for the benefit of the purchaser, to wit, giving advice and directing how its business should be conducted.

9. The property and title of William J. Wilson, the owner and vendor of this ranch, may be examined by an agent on behalf of the

company at any time prior to the completion of the purchase, and the vendor shall give all facilities for that purpose.

10. The Burlington & Missouri railroad runs direct from Chicago through this ranch and has a station at or near the center of the inclosure, as before mentioned.

11. There is telegraphic communication within one hour of London, England.

12. The climate is healthy for man and beast.

13. The above statements made by the guarantor have been made in good faith, and facts therein stated, which, if upon inspection of the property herein mentioned and described are found to be not as represented, it is agreed that they shall be made good and correct by such deductions as shall be just and fair.

14. All deeds of conveyance for the real estate herein mentioned or bills of sale for personal property shall be signed by William J. Wilson on his own behalf, and all moneys paid as the purchase price of this property shall be paid to said William J. Wilson at the City National Bank, Denver, Colorado, U. S. A.

(Signed) W. J. WILSON.

Q. This (Exh. B) bears the same date as the first one read, specifying that the purchase price was two hundred and thirty
36 thousand dollars; in this the purchase price is specified at two hundred and seventy-five thousand dollars. What explanation can you give of that; what is the occasion of this two hundred and seventy-five thousand dollars being specified?

A. Mr. Wilson declined to pay such commission, as we believed we should have, but insisted upon us making whatever we wished over and above his price as a profit, and said all that he wanted was two hundred and twenty-five thousand dollars, and we might make whatever we saw proper; he would aid us in doing it; his property was put very low so we might; he represented he believed he had nine thousand head of cattle—he guaranteed six thousand; we could with safety put a very large profit on them if we wanted to, and we suggested fifty thousand dollars; he acquiesced in it; not only said we might make that amount, but might make a million if we could; he would not object.

Q. The difference between what was specified here and in your contract was for your profit?

A. For our profit, fifty thousand dollars.

Q. When this contract came back from England——

A. The objection made by the founders of the English company was the fact that that contract contained no provision for the founders themselves; it was simply a net price of two hundred and seventy-five thousand dollars, which was understood by Wilson and Mr. Robinson; so they had prepared contracts according to their methods of doing business, and this is one of the originals; I think it has the signatures of these parties.

Q. That is the contract offered to Wilson you testified he refused to sign?

37 A. Yes, sir; two or three originals were sent here.

Q. How long after that was the contract which was sent over prepared here in Denver?

A. The date of this is October, is it? I think it is October, if I am not mistaken.

Q. Yes; it is in October.

A. The one prepared in Denver was in December; I think December 17th, if I am not mistaken, of the same year; this is also an original; there were some, perhaps six or eight of them, signed at the same time; this is one of them.

Q. This the contract with Mr. Wilson's signature?

A. Yes, sir; taken by Judge Rogers, of this city (Exhibit C).

Mr. Taylor then read in evidence to the jury the printed contract, marked Exh. C, in words and figures as follows, to wit:

Memorandum of agreement made the fourteenth day of December, one thousand eight hundred and eighty-three, between William J. Wilson, of Denver, Colorado, United States of America, hereafter called the vendor, of the first part, and William S. Everett, attorney-at-law, of Chicago, United States of America, hereafter called the guarantor, of the second part, and Thomas Fison Smith, of 54½ Old Broad street, E. C., London, as trustee, for and on behalf of a limited company proposed to be registered under the name of the New United States Cattle Ranch Company, Limited, hereafter called the purchaser, of the third part, and Arthur Robert Marten, of 63 Queen Victoria street, in the city of London, and John Potter Wilkes and Louis Edward Potter Wilkes, of 54½ Old Broad street, in the city of London, of the fourth part.

Whereas by agreement dated the twenty-ninth day of
38 June, one thousand eight hundred and eighty-three, and made between James Reynolds and William S. Everett, of the first part, and Thomas Fison Smith, of the second part, and Arthur Robert Marten and John Potter Wilkes and Louis Edward Potter Wilkes, of the third part, the said William S. Everett undertook to procure the execution of the said James Reynolds to the said agreement in manner therein specified, and, having failed so to do, has negotiated, on behalf of the said William J. Wilson, for the sale to the said Thomas Fison Smith of the property hereinafter described in lieu of the property proposed to be purchased from the said James Reynolds: Now, these presents witness:

(1.) The said vendor agrees to sell, and the said purchaser agrees to purchase, the ranch known as the Circle ranch, located on the Republican river and several of its tributaries, in the States of Colorado, Kansas, and Nebraska, at a point where the three States join, at the northeast part of Colorado, United States of America.

The said ranch contains one hundred and thirty-five square miles of good pasture land (the title to which is as hereinafter set out), all fenced in with a fence of good solid wood posts and three wires (barbed), and the entrances with iron gates.

The said ranch contains nine miles of frontage on the Republican river and fifteen miles back from the said river, through which flow several tributaries to the said river, and is well watered and affords good pasturage all the year around, and has most extensive free range upon Government lands adjoining, extending for about thirty miles in every direction, except on the south side, which is estimated to extend to one hundred and fifty miles or thereabouts, and
39 which has been used by the owners of the said ranch for several years past; also all buildings, dwellings, branding irons, wagons, books, and records of said ranch, and all cattle and horses thereon or connected therewith under the brand of the said cattle ranch, which, as appears from the books and records of said Circle ranch, should not be less than nine thousand (9,000) head, but the vendor undertakes a *bona fide* guarantee of six thousand (6,000) head, which shall be well graded American stock, free from Texas or Spanish pedigree, and includes thirty full blood Durham bulls; also one hundred and twenty-five high-graded Durham bulls; also two hundred American horses, most of which are trained saddle horses, together with saddles, bridles, and several sets of harness; also two mowing-machines and patented horse hay-rakes, all of which, together with all other property on or belonging to the said ranch, and all other cattle belonging to said ranch, and all water and other rights and privileges appertaining thereto, are hereinafter referred to as the property, upon the terms and conditions following—that is to say:

(2.) The purchase-money shall be the sum of four hundred and ten thousand dollars ($410,000), payable, as to two hundred and ninety-two thousand six hundred dollars ($292,600), in cash, as hereinafter provided, and as to one hundred and seventeen thousand four hundred dollars ($117,400) in fully paid-up ordinary shares of said company. The said two hundred and ninety-two thousand six hundred dollars ($292,600) in cash shall be paid as follows: sixty-three thousand eight hundred and fifty dollars ($63,850) within two months from the signing of this agreement by the vendor and guarantor and the notification thereof by cable to the purchaser at 54½ Old Broad street, London, E. C.

And whereas the said cattle are now upon said range, and they can only be gathered together for manual delivery during the regular roundups of each season (which roundups occur under
40 the general laws of the State of Colorado in the spring and fall of each year), and by means of the said general roundups; and whereas it is probable that all of said cattle could not be delivered until the roundups of 1885: Now, therefore, the vendor agrees that within sixty days from the date of this agreement he will, by his branding and purchase books and other evidence, give satisfactory proof to the purchasing company that there are upon said range the said cattle to the number of at least six thousand (6,000) head, and he will give to said purchasing company his bond, under seal, and with full and ample personal or other security, guaranteeing the actual manual delivery to them by the close of the roundup season of 1885, the said six thousand (6,000) head of cattle, and also

guaranteeing that he will use all due diligence to deliver all of said cattle within the season of 1884, but the purchasing company must, at their own expense, after the delivery of said six thousand (6,000) head, gather up all the remainder of the cattle belonging to the said Circle ranch and which are included in this sale; and the vendor guarantees to deliver at least ninety per cent. of the six thousand (6,000) head during the year 1884, provided all cattle delivered during that year, of all ages, shall be counted and received as part of the six thousand (6,000) head to be delivered by the vendor.

And as to the remaining sum, two hundred and twenty-eight thousand seven hundred and fifty dollars ($228,750), balance of cash purchase-money as aforesaid, the same shall be paid in sums of not less than five thousand dollars ($5,000) each and be payable as received out of three-fourths of all net moneys received by said company, whether by way of subscription to its capital stock or by sales of cattle beyond the first eighty thousand dollars ($80,000)—sixteen thou-
41 sand pounds sterling (£16,000)—so received, out of which the first payment of sixty-three thousand eight hundred and fifty dollars ($63,850) will have been previously made, and which sum of two hundred and twenty-eight thousand seven hundred and fifty dollars ($228,750) shall be paid, with interest at seven per cent. per annum from the date the said Wilson shall execute his bond with surety as aforesaid:

Provided, nevertheless, That until the sum of two hundred and ninety-two thousand six hundred dollars ($292,600), the cash portion of the purchase consideration, has been paid all sales of cattle acquired hereunder shall be made by the agent of the company and the vendor in the joint names of the said company and the vendor, of the first part, or their nominees, and the net proceeds received therefrom shall be apportioned between the said vendor and the said company, in the proportion of three-fourths to the vendor and one-fourth to the company, as and when received:

Provided always, That if the cash payments to be made in manner above provided have not, exclusive of interest, amounted to in the aggregate the following sums named and by the dates following—that is to say, one hundred and fourteen thousand three hundred and seventy-five dollars ($114,375) on or before the expiration of one year and the sum of one hundred and fourteen thousand three hundred and seventy-five dollars ($114,375) on or before the expiration of two years from the date of the execution and delivery of said bond, with surety, by the said Wilson and the possession herein provided for, then the said two last-mentioned sums, or so much of the same as may remain unpaid, shall at the expiration of said one and two years, respectively, be due and owing to the said Wilson from the said purchasing company, with interest as afore-
said.

42 Ninety-four per cent. of the cash portion of the purchase consideration shall be paid to the vendor, and the remaining six per cent. shall be paid by the company on the vendor's account as follows, viz: In the proportion of three-fourths thereof to the said Arthur Robert Marten, and one-fourth thereof to the said John Pot-

ter Wilkes and Louis Edward Potter Wilkes, or as he or they may in writing respectfully direct; and the said one hundred and seventeen thousand four hundred dollars ($117,400) shall be paid in fully paid-up shares of the company, which shall be issued as fully paid up, and paid on account of the aggregate purchase price, viz: Four hundred and ten thousand dollars ($410,000) at the time the first cash payment is made on account of said purchase price in manner and to the parties following, namely: Fifty-eight thousand seven hundred dollars ($58,700) or its equivalent in pounds sterling, or as near as may be, in fully paid-up ordinary shares to James Wright, Hurst street, Herne Hill, London, and fifty-eight thousand seven hundred dollars ($58,700) or its equivalent in pounds sterling, as near as may be, in fully paid-up ordinary shares to Florence Leonora Farley, St. Aubyn's Brighton, spinster.

(3.) The purchaser shall have the right to pay the whole or any part of the purchase-money at any time within or before any of the periods above named.

(4.) A freehold title will be give to the purchaser for three thousand acres, which includes the water right along the river and its tributaries as before mentioned, and as to the remaining part of two hundred thousand acres, more or less, included in the said Circle ranch now under fence as before described, and which land belongs to the Government of the United States, and is in pos-
43 session of the vendor by virtue of actual possession for six years last past and enclosure by said fence, and concerning which possession and fence the Secretary of the Interior of the Government of the United States, by letter dated November 7, 1883, uses the following language: "The fence would seem to be of as much benefit to the entire community as to Mr. Wilson himself." "That cannot be a trespass which interferes with nobody's rights."

As to all of said ranch under fence as aforesaid, except the three thousand acres for which freehold title will be given, a quitclaim deed will be given to the purchaser, and a good title will be given to the purchaser for all cattle, horses, and other property connected with and belonging to the said ranch, and the property and title and branding and other books of accounts of the vendor may be examined, and the cattle so fast as delivered, as herein provided, counted by an agent on behalf of the company at any time prior to the completion of the purchase. The vendor shall give all facilities for such purpose. The horses and all other property appertaining to the said ranch will be sold upon inspection thereof by the purchaser or his agent, and the cattle on certification to the satisfaction of such agent and the execution of the bond aforesaid and an inventory of all property thereunto belonging; and the vendor will make such deductions for discrepancies or deficiencies from the purchase price as shall be just and fair, the cattle and other property in which any deficiency may exist being estimated for the purpose of such deduction at current market rates on the ranch, it being understood and intended that discrepancies or deficiencies shall not of themselves be a cause for the non-fulfillment of this contract.

44 (5.) The vendor shall, upon payment of the first installment of sixty-three thousand eight hundred and fifty dollars ($63,850) and the execution and delivery of bond secured by mortgage upon the real and personal property, as herein set forth, to be sold and delivered by vendor to the purchaser, transfer and vest and give possession of the property or procure the same to be transferred or vested and delivered to and in the said company or to its nominee or nominees free from all incumbrances (except the mortgage which shall be given to secure the unpaid purchase-money), whereupon the purchase shall be deemed and treated as completed.

(6.) With the completion of the purchase all muniments of title, except the mortgage relating to the property, shall be deposited in the joint names of the company and the vendor in the City National Bank, Denver, Colorado, United States of America, or in such other custody as may be mutually agreed upon, until the cash portion of the purchase-money has been paid, whereupon the said muniments of title shall be delivered to the said company; but should default be made in payment of either of the two sums of one hundred and fourteen thousand three hundred and seventy-five dollars ($114,375) in cash or any part thereof within two months after the time herein provided for the payment of each thereof the vendor shall, upon any such default, thereupon become entitled without further notice to the sole custody of the said muniments of title and to re-enter and take possession of said ranch and all the cattle, horses, and other property thereunto belonging, with or without process of law, and using all such force as may become necessary for the purpose; [and the title to all of said lands and other property shall reinvest in said vendor as though this contract had never been
45 made, and this contract, upon such default, as to all parties hereto except the vendor, shall be void, and all moneys paid theretofore under this contract shall be forfeited to the vendor and be absolutely his; and, as to the matter of payments, time is declared to be the essence of this contract.]*

(7.) All branding irons, books, and books of account and other documents relating to the said property or to the business carried on in connection therewith shall be handed over and belong to the company on the completion of the purchase, which shall take place at Denver aforesaid.

Here modification.

(8.) The vendor will at any time render such assistance as may be necessary to the successful management of the said ranch for the benefit of the purchaser, to wit, giving advice and directing how its business should be conducted to the company or any of its employés.

(9.) The vendor will, if desired by the company, secure the services for the company as manager or comanager of one Edwin Wilson, as experienced cattle raiser, or some other suitable person, for a period of one or more years, on reasonable and satisfactory terms.

(10.) The said company shall, subject to the proviso in clause

* Words in brackets stricken out in original.

thirteen (13), adopt this present contract as soon as may be, and not later than ten days after receipt of this contract in writing from the vendor and guarantor, addressed to 54½ Old Broad street, London, E. C., and the said company shall also, subject to the proviso in clause thirteen (13) hereof, allot the shares in the said company as soon as shares of the nominal value of sixteen thousand pounds have been applied for.

(11.) The vendor, guarantor, and purchaser hereby guarantee the due performance of this contract, each for themselves, in accordance with the terms and conditions hereof, as set forth in clauses for each to do.

46 (12.) The said Thomas Fison Smith, being a formal party, shall incur no personal liability, but all other parties being interested shall be held and bound under the terms and conditions herein set forth.

(13.) In consideration of the services of the said Arthur Robert Marten, of 63 Queen Victoria street, London, E. C., and of the said John Potter Wilkes and Louis Edward Potter Wilkes, of 54½ Old Broad street, London, E. C., as founders of the company, and of their interest in the business, the parties hereto agree that without the written concurrence of the said Arthur Robert Marten, John Potter Wilkes, and Louis Edward Potter Wilkes, no variation shall be made in this agreement as regards the payment herein provided to be made, and that the adoption and allotment referred to in clause ten (10) hereof shall not be made if disapproved of by them in writing, and that to such extent the said last-named persons shall be considered as parties to this agrement.

(14.) All deeds of conveyance for the real estate herein mentioned or bills of sale for personal property shall be signed by the said William J. Wilson, and all other necessary parties, if any, on his own behalf and subject as herein specified. All cash payable to him on account of purchase-money in respect of the said property shall be paid to the said William J. Wilson at the City National Bank, Denver, Colorado, United States of America.

(15.) This agreement shall be signed by the said vendor and guarantor, and their signatures shall be attested in the presence of a judge of the court in the city of Denver, Colorado, U. S. A., when the vendor and guarantor shall thereupon notify the purchaser to that effect by cable and return four copies of this agreement,

47 duly attested and signed, to the said purchaser at 54½ Old Broad street, London, E. C.; failing which the purchasers shall, with the written concurrence of the parties of the third part, be at liberty to rescind this contract without any liability to the vendor.

As witness our hands and seals this — day of December, A. D. 1883.

—— ——, *Vendor.* [SEAL.]
—— ——, *Guarantor.* [SEAL.]

Witnesses to above signatures:

—— ——. [SEAL.]
—— ——. [SEAL.]

UNITED STATES OF AMERICA,
State of Colorado, County of Arapahoe:

I, —— ——, judge of —— court of the State of Colorado, U. S. A., hereby certify that the above-named vendor, grantor, and witnesses signed the foregoing instrument of writing in my presence the day and year above mentioned, and that they are personally known to to me to be the persons they represent themselves to be.

—— ——.

Q. Were you in Denver when that contract was signed and forwarded?

A. Yes, sir.

Q. The number of copies called for in there were forwarded to England?

A. Yes, sir.

Q. How long after that was it before these parties came to
48 America, the representatives of the English people?

A. Well, I think they came to America in February, 1884.

Q. Did you have any further conversation or arrangements with Mr. Wilson after the signing of this contract and prior to the arrival of the English representatives?

A. Yes, sir.

Q. State where it occurred and when and what the conversation was.

A. Mr. Wilson appeared in my office without my having known of his coming—I think on the second day of February—in the early part of February at all events—1884, and I then informed him that I had been advised of the fact that the English parties were on their way from London to America to inspect this property and close the purchase.

Q. Were there any negotiations or further transactions that took place between you?

A. At the time this contract was signed you just read to the jury that was the third contract signed by Mr. Wilson, the first one to Robinson and myself for two hundred and twenty-five thousand dollars and then one signed at the same time that had been sent to Europe for two hundred and seventy-five thousand dollars, and this one for four hundred and ten thousand dollars. Shortly after this third contract had been signed and ready to be delivered to me, Mr. Wilson presented a little stipulation in Mr. Patterson's office, which I signed, and which I understood then and understand now was intended to cut off any further operations or negotiations on the prior contract, and to confine whatever operations we might have in
the future to this third contract, the one you just read. I did not
49 understand it then; don't know from the language of it that it intended to affect our brokerage or profits—our commission; indeed, Mr. Wilson said at that time it would not; then, when Mr. Wilson appeared in the office, in February, I told him about these parties coming. I wanted him to sign a contract which would fix what we had before agreed upon as our share of the profits and

commissions—as I held that contract cut off all former contracts—give us a commission, but he declined to do that; he said he would not sign any paper whatever without consulting his attorney, and I either gave him a written letter or sent — to him, I don't just remember which, and my relations with Mr. Patterson had been very pleasant in the work we had been doing. I addressed him a full letter, stating my position in the matter, so that he might have a full understanding from both parties. I received a letter from Mr. Patterson in reply, which is here, entertaining about the same idea I had of that contract, which I still entertain. Mr. Wilson insisted upon myself and Mr. Robinson accompanying the English gentlemen to Denver. I did not think it necessary for myself to come out; indeed, I was engaged in my profession. I could not very well leave the office at that time, not without some loss. I thought Mr. Robinson would be sufficient. I felt it was nothing but to see the matter closed up and felt satisfied that he would pay over and give obligations which would be satisfactory for the amount he had agreed to pay us, but he insisted on my coming, and he said he would give ten thousand dollars additional if I would come out and close up the sale. I asked him, then, if he would put that in writing, and I asked him if he meant ten thousand in addition to the five thousand dollars commission and in addition to the fifty thousand dollars profit we had in the sale; he said, Yes. He said he would even do better than that; he said he would divide whatever he would make in the sale over and above that. I did not understand what that meant exactly, and so I asked him to explain what difficulties there were in the way; whether he could not carry out the terms of his contract. He said, Yes, but he said that they might, maybe, want the cattle counted, and the cattle could not be counted for two or three months under the laws or rules of the Cattle Association, or something or other, but he wanted the sale closed up then, and I said that he had obligated himself to give a bond, and he had obligated to come to a matter of the time, and I thought the matter could be carried out, but he still insisted on my coming out, and as additional inducement, after offering the ten thousand and the five thousand and the fifty thousand, he says: Mr. Everett, I will give you a fine pair of carriage horses if you will come out, in addition to that. I didn't object to the carriage horses; I didn't know but the gentleman — I came out; I never got the carriage horses and never got a cent of my expenses. Mr. Patterson in saying that he tendered me five thousand, I wish to say, was mistaken, when you say Mr. Wilson made any tender of five thousand.

Q. If he made any he never made you a tender of anything?

A. No, sir; when I came here Mr. Robinson spent two or three weeks; negotiations finally seemed to drag along, and whilst I had examined the statute with reference to foreigners owning property in Nebraska and in Kansas I had understood from Mr. Wilson it was mainly in Kansas; the home office would be in Kansas City; but I had not examined as to Colorado. We found when we came here it was necessary for a foreign corporation to have an agent duly appointed and his agency made a matter of record, and we

found it necessary before they could deliver papers, make any payments, or sign any obligations, such as debentures, notes, or
51 mortgages, that they would have to cable to London to get that certificate to get the appointment of an agent, and having some matters in court pressing I went home and left Mr. Robinson here; whether he stayed until that was done I don't know. I, with Mr. Wilson, Mr. Wilkes, Mr. Dickie, who accompanied Mr. Wilkes from London, went to the ranch and spent several days. Mr. Dickie, as I understood, was the examiner who was to make a report on the property. Mr. Wilson came here to take possession if everything was reported all right.

Q. During the time you were here and these negotiations were approaching completion did you have any statement — conversation with Mr. Wilson about the payment of these commissions?

A. Yes, sir; when I found matters seemed to be moving along. Mr. Hughes was appointed counsel for the English company, and of course he was looking after their interests. Mr. Patterson, I think, was, perhaps, still acting as counsel for Mr. Wilson, and what alterations or changes were taking place, what difficulties were in the way, were not disclosed to me fully, and as I did not seem to be wanted in the matter I paid very little attention to it; they seemed to carry on that part of the matter among themselves. I met Mr. Wilson. I wanted to return, and asked him if he would not make a written agreement. He said he would not put anything in writing; would do as he had agreed. I asked him once if he meant by that he would pay fifty thousand dollars. He said he would. I asked him if he would pay the five thousand dollars he had agreed above that. He said he would. I never asked him for the pair of horses. The conversation that took place in my office before we came out was reduced to writing, so we have it. It was not signed, of course.

52 Cross-examination of Mr. EVERETT by Mr. PATTERSON:

Q. Mr. Everett, how long have you lived in Chicago?

A. About between eleven and twelve years.

Q. Tell the jury your business.

A. I am a lawyer.

Q. Practicing law in Chicago during that length of time?

A. Yes, sir.

Q. Did you have a relative of yours in London during these negotiations?

A. Well, I had, perhaps, a relative; it is very remote; it is the same name, or nearly the same name—Everett.

Q. And was this the gentleman who was negotiating for you what you call the Reynolds deal?

A. No, sir.

Q. Who had done that?

A. At that time I knew nothing about ranches; never had been on one; knew nothing about their value, but, having received this letter as I, when there, received a great many letters, I simply looked after it as a matter of accommodation to an American citizen. One

gentleman by the name of Carlton, whom I was doing some other business with, told me about the United States Cattle Ranch Company. Dr. Everett had an office not a great ways from 54 Old Broad street, and I occasionally went there and did correspondence; sometimes had a little writing, though it was not my regular place, but it was down in the city and very convenient, and I showed him this letter. We called his attention to it and spoke to him about Wilkes Brothers having had some difficulty with the ranch, and he seemed to know them, and together we called upon them.

53 Q. The result of it was, so far as this Reynolds matter was concerned, it fell through because it did not turn out as represented?

A. Yes, sir.

Q. Some time in the summer of 1883 Mr. William Wilson was in Chicago?

A. Well, when I came to Chicago in order to see whether I could get Reynolds to sign I found by correspondence he had not any such property and could not sign. I then called upon some three or four men in Chicago to find whether they had a ranch. During my efforts to find a ranch Mr. Robinson came to the office and said he had one; the ranch he represented was the Wilson ranch.

Q. That was your first introduction, was it, through Mr. Robinson?

A. Then Mr. Robinson, I think, telegraphed and Wilson came to Chicago.

Q. You say when you met Mr. Wilson he gave you a description of the ranch?

A. Yes, sir.

Q. And he told you that what he wanted for his ranch was $225,000 net?

A. Yes, sir.

Q. And you told him then that you wanted a commission?

A. Yes.

Q. But he was unwilling to give you the amount of money you thought you ought to make in a deal of that magnitude?

A. Well, that was the result of it ultimately; yes, sir.

54 Q. But he said, as I understand you, that for the purpose of enabling you to make something positive he would raise his price to $230,000 and allow you $5,000 of that as commissions?

A. Yes, sir.

Q. He also agreed, so far as you were concerned and Mr. Robinson, you might take this property to England and sell it for a million dollars, if you could, and that whatever you made over and above the price you would pay to him, to wit, $225,000 net, you might have yourself?

A. I would not say whatever we made——

Q. In other words, you were given authority, so far as Mr. Wilson was concerned; he consented to this, that you might go to London or any place else and sell the property for all you could get, and

whatever you got for the property over and above $225,000 you should have?

A. At the same time he signed a contract limiting the price to $275,000.

Q. That was the limit you placed upon it?

A. With his consent.

Q. You say it is $275,000?

A. Certainly.

Q. He didn't stickle to make it much more or less?

A. He didn't suggest we should put a million in the contract or anything of that kind.

Q. You fixed your own sum?

A. Yes, sir.

Q. And you put that sum at $275,000?

A. Yes, sir.

Q. And Mr. Wilson acquiesced in the sum you yourselves fixed?

A. Yes, sir.

Q. In signing the contract, didn't you say to him at the
55 time this agreement was signed, We want this to take to England for the purpose of showing it to the English people and having them understand that this is the price we are paying you for that property?

A. No, sir.

Q. Wasn't that the reason you inserted into the contract that Mr. Wilson was selling this property for the sum of $275,000, one-half payable——

A. No, sir.

Q. Wasn't that the reason; didn't you want the whole purchase-money; was not that the object in putting in the $275,000?

A. Well, that is one view of it; the promoters in England always make an addition to the purchase price, or if the property won't admit of it they won't undertake to handle it; we were acting in harmony with the English methods; we put our commission on it.

Q. This difference between $225,000 net or $230,000 or $275,000 was to be for your own benefit, was it not?

A. Yes, sir.

Q. Mr. Wilson at all events was to receive $225,000?

A. Yes, sir.

Q. For the purpose of getting this price from the English company did not you suggest it be placed in the contract what money should be paid to him; that the sum he received over and above $225,000 should go to you?

A. Yes, sir; but I explained to him furthermore that the full consideration would have to appear in the contract, as they register their contracts there, on which the founders—the full consideration—was paid by the English purchasers.

Q. That is the reason you put it in; that would have to
56 appear?

A. That is the reason we put in, but at that time Mr. Wilson said he was giving his property very low. I could easily see

from the number of cattle he had and what his ranch was making that was a very low price.

Q. Now these two contracts that have been read, one signed by Mr. Wilson as you state, were both made at the same time?

A. Yes, sir.

Q. The arrangement was really part and parcel of the same transaction?

A. Yes.

Q. This contract signed by Mr. Wilson and yourself indicated the amount of money Mr. Wilson was to receive for his ranch, didn't it?

A. Yes, sir.

Q. The amount of money you were obligated either to pay to him or see that he got?

A. No, sir, I don't think we undertook to see that he got it; there was nothing of that in the contract.

Q. And this was the contract that fixed the price that you would sell the ranch at, the surplus over $225,000 to go to you and Mr. Robinson?

A. Yes, sir.

Q. Then, after you got those two papers from Mr. Wilson you then commenced your negotiations through this Dr. Everett in London?

A. No, sir; the negotiations had been carried on in the Reynolds matter and my efforts were to substitute this for the other and get the English company to accept it; if they failed to accept it the negotiations were at an end, and Dr. Everett was simply act-
57 ing as my agent there for the purpose of keeping the business in the hands of an American.

Q. Whatever negotiations you had were conducted by Dr. Everett, in London, in your behalf and Mr. Robinson's?

A. I am not certain whether I sent the contract directly to him or sent it to Mr. Wilkes; I am not clear about that.

Q. When was it you received this contract from London—the one that is signed by the English people?

A. Intended to be signed by Mr. Wilson?

Q. Yes, sir.

A. Well, I received that some time in September, I think, or October; perhaps in October. What is the date of it there, if you please?

Q. Made the 16th day of October.

A. It was later than that.

Q. Then was this contract or several copies, duplicates, or triplicates sent out to you from London to have Mr. Wilson sign it?

A. Yes, sir.

Q. Did I understand you to say you then wrote to Wilson when you received this?

A. I think Mr. Robinson did.

Q. The result of it was Mr. Wilson came to Chicago from Denver?

A. Yes, sir.

Q. He there had an interview concerning this contract sent. This was not the contract or a copy of the contract he had signed and that you sent to England?

A. No, sir.

Q. You say at the first interview with Mr. Wilson, when you showed him this contract, he didn't appear to have much objection to it, but he took a copy of it away with him, didn't he?

58

A. Yes, sir.

Q. He came back next day and told you he had seen Tankersley and from what Tankersley said he refused to sign it?

A. Yes, sir.

Q. And the result of it was he went away leaving the matter practically at an end; that is the truth, isn't it?

A. Yes, sir.

Q. So far as you and Mr. Wilson were concerned at that time, and with this contract as a basis, negotiations had ceased when he was in Chicago and he said he would not sign it?

A. He said he would not sign it.

Q. I understand it was about that time you went to Texas?

A. Yes, sir.

Q. You came back and found a number of cablegrams awaiting you from London urging this matter should be fixed as soon as possible; you thereupon came to Denver to see what you could do with Mr. Wilson; is that right?

A. Yes, sir.

Q. You came to Denver with these contracts in your possession in the month of December, 1883?

A. Yes, sir.

Q. This contract Mr. Wilson again refused to sign, didn't he, but he said if we can get together now and agree upon a contract that will satisfy the English people I am willing to sell my ranch, and it grew out of that that you and I and Mr. Wilson got together for the purpose of seeing if we could agree upon a contract Mr. Wilson would sign and that the English company would be liable to accept?

59

A. Yes, sir.

Q. And the result of our talks and interviews was that this contract marked Exhibit C was prepared and printed and a number of them signed by Mr. Wilson and entrusted to you, you undertaking to get the English parties to agree to it; that is correct, is it not?

A. Yes, sir.

Q. Up to that time was there any change in any matter that had transpired between you and Mr. Wilson touching those two contracts I called your attention to first, the contracts of August 17th, 1883?

A. Except the stipulation I signed in the evening in your office.

Q. I will come to that in a moment; with that exception nothing had taken place?

A. No, sir.

Q. It was quite uncertain about the English parties accepting that, I suppose, wasn't it?

A. Do you mean the last contract?

Q. Yes.

A. The one that you and I drafted I don't think it was uncertain.

Q. Mr. Wilson was so indifferent to it, was he not, Mr. Everett, that he would not agree to pay the attorney's fees for drawing up that contract unless it was finally consummated, and you agreed with Mr. Wilson, did you not, that if the English parties did not accept the contract that then you would pay my fees for services, $150?

A. Mr. Wilson put it a little stronger than you; he said unless I did that he would not enter into any negotiations whatever.

Q. When you were urging Mr. Wilson to get up some agree-
60 ment you might get these English people to take did not Mr. Wilson make it *sine qua non* that unless the agreement was signed he would not even pay out attorney's fees?

A. I can hardly think Mr. Wilson was so indifferent; I had understood he had this property advertised in the newspapers in Chicago before that, and that he had given it to Col. Robinson to sell, and he seemed to be anxious to get a purchaser. The only thing about it—he did say to me once he did not believe I could sell the property, and gave as a reason that the man by the name of Dunn had examined the property and made a very full report upon it, and he didn't see how a lawyer living in Chicago and not going to London could sell his property.

Q. Let us keep to what occurred at our interviews; it is a fact, however, that Mr. Wilson, whether from indifference or not, did refuse to even enter into negotiations unless you would agree to pay his attorney's fees for work done in the drawing of these contracts in the event you failed to sell?

A. Yes.

Q. Now, you say that at that time, while you were in Denver in December, that you signed a paper and Mr. Wilson signed a paper—that is, a joint—with reference to commissions and with reference to profits of the contracts, didn't you?

A. Well, I said I signed one; I don't remember whether Mr. Wilson signed or not, but if you have the original I will see whether it was signed by him.

Q. I understood you to say that the agreement you did sign you understood simply to abrogate the prior contracts for the sale of the ranch to these English parties, but not to interfere with your agreement with Mr. Wilson with reference to the price he
61 was to receive for the ranch—$225,000 for the ranch—$5,000, and anything you got——

A. I thought it went a little further above, because, if I remember right, the contract, the only——

Q. The only contract in which the names of Everett and Robinson appeared was that short paper, the sixty-day option for $225,000.

A. That is the only one I know of in which Everett's and Robinson's names appear.

Q. Did you understand at the time the contract was signed to which I referred that this agreement, by which you were to pay

him $225,000 net for the ranch and he should pay you $5,000 commission, was abrogated?

Objected to.

The COURT: I think you will have to rely on that on the record introduced.

(Witness is handed paper, and says:) I think that is the agreement I signed.

Q. Tell the jury who wrote that.
A. I suppose you wrote that.
Q. Didn't you write part of it?
A. I wrote my name.
Q. Look at the five, six, or seven lines above your name, commencing at the bottom of that page; this on the other page.
A. Yes, sir.

(Here counsel read the paper to the jury, which is as follows:)

EXHIBIT "D."

DENVER, COLO., *Dec.* 15, 1883.

62 Whereas a certain contract or contracts have heretofore been entered into between William J. Wilson, of Denver, Colorado, of the one part, and William S. Everett and J. M. Robinson, Esq'rs, of Chicago, Ill., and each of them, of the other part, for the sale of the Circle ranch, horse and cattle, belonging to said Wilson; and

Whereas a contract has this day been executed by the said Wilson, as vendor, and the said Everett, as ag't and guarantor of the said Wilson, for the sale of said ranch and cattle to the New U. S. Cattle Ranch Company of London, England, and which last contract supersedes all other and prior contracts in which the names of said Everett and Robinson or either of them appear:

Now, therefore, all contracts, agreements, obligations, or other liabilities heretofore entered into and in which the names of said Everett and Robinson or either of them appear are cancelled and held for naught, and the said Wilson is hereby released from same; the commissions to said Everett and Robinson to be $5,000 and a reasonable amount above said sum as may be just and fair according to the advantage said *and* William S. Everett may prove to be in having parties purchaser receive the property sold under and by virtue of contract of sale made this day as we may agree upon.

(Signed) WILLIAM S. EVERETT.
" W. J. WILSON.

—. Will you tell the jury with what words the part of this contract that you wrote commenced?
A. The first word of the second line.
Q. This is the part you added to the contract: "The commissions to said Everett and Robinson to be $5,000 and a reasonable
63 amount above said sum as may be just and fair according to the advantage said William S. Everett may prove to be in

having the parties purchaser receive the property sold under and by virtue of a contract of sale made this day as we may agree upon."

A. Yes, sir.

Q. Did you understand this contract to abrogate all prior contracts?

A. There was another contract signed that provided for another sum than $5,000, any sum above that and all profits, brokerage, we made over and above $225,000.

Q. This abrogated the contract for commissions to you?

A. No, sir; it provides for the payment of the $5,000.

Q. Except as it appears in here?

A. Yes, sir.

Q. But what you have denominated profits which were provided for in the contracts of August 17th you understood were not touched by this?

A. No, sir.

Q. And the profits were indicated by one of these contracts?

A. Indicated by the other.

Q. And both together?

A. Both together; yes, sir. I would say at the time this agreement was signed I was not at all certain that the English company would accept the property, and I was not at all certain but they might make an offer of $230,000, and if so we would accept it and get only our $5,000 commissions. It was entirely open so far as they were concerned; I had no fixed price with them whatever.

Q. Except as this contract you had prepared for Mr. Wilson?

A. They had received this contract of August and that grew out of it.

64 Q. Now, we are referring——

A. That satisfied me that they would accept the property at the price.

Q. When was it that Mr. Wilson went to Chicago after this contract of December was signed?

A. Well, it was February 2nd, I think; if you will allow me to refer to the paper I have here I will say exactly.

Q. Yes, sir.

A. Yes, sir; the time that he appeared there in which he offered the $50,000 and the $15,000 was February 2nd, 1884.

Q. Do you know how Mr. Wilson came to be in Chicago at that time?

A. No, sir.

Q. You did not send for him?

A. No, sir; whether Mr. Robinson had or not I don't know; I had not—at least, I don't remember of having sent for him.

Q. Had you received information from the English parties at that time as to the contract that Mr. Wilson had signed and sent over?

A. I state that I only had received information that they had set sail and would be in Chicago at a certain time, which satisfied me they were going to negotiate on that contract.

Q. I don't understand you whether at the time Mr. Wilson you say was in Chicago, upon the 2nd of February, you had received word that the English company would accept the contract.

A. I think so; I think I can show you the cable I received, if you desire it.

Q. It is enough for you to answer my question.

A. I think so; that is my recollection; I have got it in my valise there.

65 Q. Was it at the time Mr. Wilson wanted you to come to Denver when he was in Chicago?

A. Yes, sir.

Q. And you say it was at that time Mr. Wilson said to you, If you will come with these parties I will give you $10,000 additional and a fine pair of carriage horses?

A. Yes, sir; he said more than that. He didn't think the sale would go through unless we did come, and if we came and the sale was closed he would pay us $10,000 and the horses in addition to the $5,000.

Q. If the sale was closed?

A. Yes.

Q. After Mr. Wilson returned to Denver, after being in Chicago on the 2nd of February, did you send him a contract to sign or a re-affirmation?

A. I think I did.

Q. Is that the instrument you sent Mr. Wilson to sign (handing paper)?

A. Well, I am not positive; this is not in my handwriting, Mr. Patterson, but this may have been the paper that was sent; I see it bears date August 17th, 1883, and below it I see that it is a repetition of the first contract. The draft of February 2nd, 1884, is the additional.

Q. The ratification you wanted Mr. Wilson to add to it?

A. This is in the handwriting of my son; I suppose he would know all about it; I did send something to Mr. Wilson; I don't say this is not it.

Q. Isn't it your belief that it is?

66 A. It is my impression it is.

The paper spoken of by witness is here offered in evidence.

EXHIBIT "E."

CHICAGO, *Aug. 18th*, 1883.

I hereby agree to sell to William S. Everett and J. M. Robinson or their nominees the ranch known as Circle ranch, located on the Republican river at a point where the States of Colorado, Kansas, and Nebraska join, at and for the sum of two hundred and thirty thousand ($230,000) dollars, less five thousand ($5,000) dollars allowed said Everett and Robinson for commissions, said sale to embrace said ranch with cattle, horses, and everything that thereto belongs, and the said parties to have the refusal of said property for

sixty days from this date and such longer time as may be necessary to close said sale: Provided, That within said sixty days there is fair prospect of a sale being made satisfactory to me.

(Signed) W. J. WILSON.

CHICAGO, *February 2nd*, 1884.

I hereby affirm and ratify the above agreement, and further agree that the sum of fifty thousand dollars ($50,000) provided in the contract signed by me in Denver, December 24th, 1883, is no part of the purchase price due me, and shall be paid as commissions as and when the purchase price for said Circle ranch shall be paid.

—— ——.

Q. There was nothing occurred in what you and Mr. Wilson had in Chicago that abrogated this contract of August 17th?

67 A. No, sir; no conversation that undertook to abrogate any contracts. He always expressed himself as ready and willing to do what he had agreed.

Mr. PATTERSON: There is a copy of this first contract of August 17th, which I need not read, and immediately below it is this: "Chicago, February 2nd, 1884. I hereby confirm and ratify the above agreement, and further agree that the sum of $50,000 provided in the contract signed by me in Denver, September 4th, 1883, is no part of the purchase price due me, and shall be paid as commissions as and when the purchase price for said Circle ranch shall be paid." That was what you wanted Mr. Wilson to sign and which he did not sign?

A. Yes, sir.

(Paper spoken of by witness is marked Exhibit E.)

Q. In that contract that you sent Mr. Wilson to sign after you say he had been in Chicago and proposed to give you $10,000 if you came out—you did not say anything about the $10,000 in that?

A. It don't seem to be in that.

Q. Did you send him that telegram shortly after you sent him this intrument to sign? (Witness is shown telegram dated February 6th.)

A. Well, yes, sir; I suppose that is the telegram I sent Mr. Wilson, or Mr. Robinson; either one or the other of us. I know such a telegraphic despatch was sent.

(The telegram was read and is as follows:)

EXHIBIT F.

"CHICAGO.

"To W. J. Wilson, 240 South 15th street:

Dickie arrived; cannot start for Denver until we receive

68 commission; contract signed; for instantly (or immediately).

EVERETT AND ROBINSON."

Q. Mr. Dickie, the gentleman you referred to, was one of the English parties who came out?

A. I said Mr. Dickie in that, because Mr. Dickie advised with me more fully. I think he was the only gentleman from whom I received dispatches while on his way from New York to Chicago upon his arrival.

Q. You say you wrote me a letter about the same time growing out of the pleasant relations existing between you and me?

A. That is my recollection.

Q. In answering that letter I stated substantially the agreement between yourself and Mr. Wilson?

A. Yes, sir; with a little exception. There was some little difference. You stated there was an understanding between us which he would carry out, and carry out to the letter. That was the first notice I had of an advance on the price. You fixed the price *per capita* of the cattle; something I hadn't heard of before that.

Q. With that exception?

A. Yes, sir.

Mr. Patterson now reads the letter spoken of in evidence, as follows:

EXHIBIT G.

In EVERETT *vs.* WILSON.

Markham, Patterson & Thomas, lawyers.

DENVER, COL., *Feb'y 11th*, 1884.

William S. Everett, Esq., 99 Madison St., Chicago, Ill.

69 DEAR SIR: I was absent in Leadville when your letter of 2d inst. reached Denver. I did not return until yesterday, and I awaited the coming of Mr. Wilson before answering. Mr. Wilson has just been in and talked the matter over, and I write you now the result of our conversation. Mr. Wilson brought with him the contract which you sent him to sign. He is disinclined to sign it, fearing there may be some technical point connected with it that he does not understand. That is the only reason he gives for refusing to sign it. However, he tells me, and there is no reason to doubt his statement, that he stands ready to carry into effect to the very letter his agreement and understanding in reference to the sale of the ranch to the English parties—that is, the cattle to be turned in at $30 per head, guaranteeing 6,000, and horses at $50 per head, guaranteeing 200, and the ranch at $50,000. Whatever the gross amount as mentioned in the contract may come to over and above these figures he expects to and will pay over, as understood between you and him, whether the same is mentioned in the contract or not. I don't even understand myself just what those provisions are that are referred to both by you and Mr. Wilson, but I am entirely satisfied that whatever your agreement or understanding is with reference to commissions, that it will be carried into effect to the very letter by Mr. Wilson. Mr. Wilson realizes that in the contract made between you and him in Denver there was a mistake or over-

sight in the matter of com's, and that that oversight will be rectified when the sale is perfected. My opinion is that the English parties with yourself had better come to Denver at once, as these matters can all be fixed better when the contracting parties are face to face. If you start you had better wire me, so that if my presence is needed I may be able to arrange other business matters that might possibly be in the way. When you were here a contract was entered into between yourself and Mr. Wilson which you left behind you in my drawer, and of which I now enclose you a copy. Hoping the transaction may come to a successful issue,

I remain, very truly yours,

(Signed) T. M. PATTERSON.

Q. I ask if the contract to which I refer in the letter, a copy of which was sent, was one signed by Mr. Wilson upon the 15th of December?

A. That is my impression; if you will just let me refer to the copy sent you I will see.

Q. That is the copy of the contract I refer to in that part of the letter?

A. That is the copy I received.

70 Q. You never answered this letter to me?

A. I came in person; very soon after receiving your letter I met you.

(The letter spoken of by the witness is marked Exhibit F.)

Q. Is it not a fact that you started from Chicago before you received that letter of mine?

A. Yes, sir.

Q. Did you, when you came to Denver, make any statement to me that indicated that I had not stated the agreement between yourselves and Mr. Wilson correctly?

A. I don't think I did.

Q. I read you when you came to Denver, did I not, from my letter book a copy of this letter I had sent you in Chicago, and which you had not received because you started before it arrived?

A. I think you did. I afterwards got a copy of it from my clerk.

Q. Did you, when you came to Denver, in February or March, 1884, and when these matters were finally settled up, and after I had shown you a copy of this letter that was sent to you—did you make any statement to Mr. Wilson that the arrangement was not properly stated in that letter?

A. I don't think I did.

Q. Did you, in any conversation with me, ever make any statement to me that Mr. Wilson had ever agreed to give you $10,000?

A. I don't know that I did.

Q. Did you say anything to Mr. Wilson about that $10,000 after you came to Denver?

A. Yes, sir; Mr. Robinson and myself both spoke.

Q. Let me ask you if the $10,000 you referred to—did it not grow

out of this? Mr. Wilson was very anxious to have the cattle accepted, range delivery, and he wanted you to use your in-
71 fluence to get the cattle accepted, range delivery, so that he would not be put to the expense and trouble of gathering the cattle. Did not he estimate the cost of gathering the cattle at $10,000, and did he not say to you, If you can induce the English people to receive these cattle, range delivery, and not put me to the expense of delivering—gathering them up—I would just as soon pay you the amount it would cost, which would be about $10,000, as to pay the money to them. Was not that——

A. What you say was in part as I recollect it, but he said to me that he wanted a range delivery at that time; that he feared they would want a count at that time, which was early in the spring—in February or March—and that he could not have a roundup until May or June—May, I think he said—and he wanted the matter closed before that time; but he said to me that a delivery at that time would cost him $20,000 or $25,000, and he said he would be willing to divide it.

Q. In talking to you about the $10,000 was not the particular thing you were to do, after you came to Denver, to use your influence to get a range delivery from the English people; was not that what you came to Denver for?

A. That is not my recollection of it.

Q. Do you say it is not?

A. I am only speaking from my recollection.

Q. You won't speak any more positively?

A. No.

Q. Mr. Wilson did speak to you in Chicago about a range delivery?

A. He did, sir; that it would cost him 20 or 25 thousand dollars.

Q. To have the roundup?

A. Yes, sir; before the proper season.

72 Q. If you could get a range delivery he would be willing to divide the expenses of a manual delivery?

A. He talked about a definite sum; I think he said 25 or 30 thousand dollars; he gave reasons which were entirely new to me; he said that to disturb cattle at that season of the year was very injurious to the herd, and that it would be very expensive to him and disastrous to the herd if he was obliged to disturb it.

Q. Was not this $10,000 to be paid to you if you would come to Denver or if you would succeed without coming to Denver, if you would get for him these English parties to receive these cattle, range delivery?

A. There was something of that kind said, I admit; he said that if I would come and the sale would go through he would give $10,000.

Q. And with range delivery?

A. That is not my understanding.

Q. You would not swear positively that was not the fact?

A. My best recollection is it was not. I remember very distinctly we talked over the items of this contract, and the terms of

his contract provided for counting, at two roundups each year, and some other things I said I could not interfere with.

Q. Did you not come to Denver and try and get range delivery? Did you not try and induce the English people to accept a contract range delivery?

A. I don't think I did. I left the matter to Mr. Robinson. Mr. Robinson understood more about the cattle and more about the books. I examined them some time simply as to what they showed.

Q. You know it is a fact the English people would not accept range delivery at all?

A. I don't know about that.

73 Q. I want to call your attention to the contract that you entered into December 15th, in which you wrote a provision yourself upon the subject of commissions—if the last clause of that does not refer to the fact that Wilson was to pay you some sum if you got range delivery, although the range delivery does not appear, commencing with the part you wrote, "Commissions to said Everett and Robinson to be $5,000 and a reasonable sum?"

A. That took place a long time before.

Q. I understand; I will come to that.

Mr. PATTERSON reads:

Q. "The commissions to said Everett and Robinson to be $5,000, and a reasonable amount above said sum as may be just and fair, according to the advantage said William S. Everett may prove to be in having parties purchaser receive the property sold under and by virtue of the contract of sale made this day as we may agree upon." Did not that refer to inducing the English parties to receive the cattle, range delivery; was not that your understanding at the time?

A. No, sir; we talked about a good many things. I became satisfied of the fact—I became satisfied he did not have a good abstract to all his real estate. I may explain what induced me to write. As far as I could understand, he did not have an abstract of his title; it was questionable to my mind whether he had three thousand acres of deeded land, patented land, and it was all these things that we talked about had to be considered; and then it called for a good deal of labor.

Q. Was not a part of this, and concerning which you wrote at the end of this contract—did not a part of that relate to range delivery, what you might be able to do, might be able to induce the

74 English people to receive the cattle, range delivery?

A. I never undertook to do that; I knew they would not take the property unless they were counted in some way.

Q. There was no price agreed upon between you here; when Wilson went to Chicago he said if you will get these people——

A. His language was this, as near as I can remember—there were others present when it was said——

Q. Did not you tell Mr. Wilson in Chicago you believed you could get the English people to receive them, range delivery?

A. I don't think that took place in my office.

Q. I say in Chicago.

A. I had no conversation at that time with Wilson outside of the office; Mr. Robinson, my son John here, myself, and Wilson; all the conversation we had was at that time; he went out of the office; I did not see him afterwards.

Q. Do you say positively, Mr. Everett, that you did not express the opinion to Wilson, in Chicago, upon this occasion that you believed you could get the English people to receive them, range delivery?

A. No, sir; I remember very well saying something like this: That if his books showed 9,000 head of cattle, and if the English people were satisfied, after riding over the range, that there were 6,000 on it that he guaranteed, I had no doubt, they would close the —; the fact is when we came and examined the books the books showed more than 9,000 head of cattle. I think there were formal affidavits by his former superintendent and one or two of his hands to the effect that there were more than 9,000 head of cattle on that range.

Q. You speak about the conversation that occurred between you and William Wilson in February, 1884, in Chicago, having
75 been reduced in writing.

—. I meant that before anything else was taken up in the office the conversation was reduced to writing within a minute after he closed the door.

Q. As soon as Mr. Wilson went you and your son——

A. Yes, sir; and Mr. Robinson.

Q. Reduced it to writing?

A. Yes, sir.

Q. You did not call Mr. Wilson's attention to it at any time, did you?

A. No, sir.

Q. Ever afterwards?

A. No, sir.

Q. Was that the first time Mr. Wilson talked about giving you a horse or team?

A. I think so.

Q. The first and only time—the first time he ever spoke about giving you a horse or team?

A. I think so; I don't recall any other time; I didn't attach much importance to it then; I simply referred to it as a matter of showing his——

Q. Did you write that letter of October 6th, 1883 (handing paper)?

A. That is my handwriting.

Q. I find the closing sentence of this letter is as follows: (Hands letter to counsel for plaintiff.)

Mr. TAYLOR: I would like the whole letter to go in.

Mr. Patterson read in evidence letter dated October 6th, 1883, as follows:

76 EXHIBIT H.

CHICAGO, *Oct.* 6, 1883.

William J. Wilson, Esq.

DEAR SIR: Your telegram of yesterday just at hand, asking for a copy of agreement between you and me. We herewith send copy. We received a cable dispatch on the 2nd inst. as follows: "Will Wilson accept sixty thousand down, balance one and two years, taking, meantime, three-fourths proceeds shares and cattle?" Yesterday we received another cable: "Answer instantly." These dispatches show that our parties are ready for business. Mr. Robinson explained the first cable in his letter, which you doubtless have received. As I understand it, they mean to pay $60,000 down, three-fourths of all made from the sale of cattle and three-fourths arising from the sale of shares, which will, in my opinion, pay you off in a very short time. They are certainly very anxious to know, so as to send their man over to not only examine your cattle, &c., but also to close the sale. They will be ready to cash up the $60,000, and you will get a mortgage on the ranch, cattle, etc., for the unpaid balance of the purchase-money. Mr. Robinson regards this as a better offer than your own. I am anxious to hear from you by telegraph, as I want to cable at once. We have other ranches to put in if you decline the offer. I know they have the money and are ready to purchase, and I do not want to lose the chance of making a sale. As you get three-fourths of the proceeds of the cattle ready for market, in addition to the $60,000, it will make the cash payment about equal to $95,000, besides a chance to get a sum arising from the sale of stock in the London market. It looks to me like a splendid sale, and one that there has been but little trouble about, and in this respect commends itself very favorably to all interested.

If the sale goes through I will think about that horse you spoke so favorably of.

Respectfully yours,

(Signed) WILLIAM S. EVERETT.

Please answer by telegraph.

Copy. (To accompany Exhibit H.)

CHICAGO, *Aug.* 17, '83.

I hereby agree to sell to William S. Everett and J. M. Robinson or their nominees the ranch known as Circle ranch, located on Republican river, at a point where the States of Colorado, Kansas, and Nebraska join, at and for the sum of two hundred and thirty thousand ($230,000) dollars, less five thousand dollars ($5,000) allowed said Everett and Robinson for commissions, said sale to embrace said ranch, with cattle, horses, and everything that thereto belongs, and the said parties to have the refusal of said property for sixty
77 days from this date, and such longer time as may be necessary to close said sale, provided that within sixty days there is fair prospect of a sale being made satisfactory to me.

(Signed) W. J. WILSON.

Q. He had been promising you a saddle horse?

A. That was one horse; the other was a pair of horses; I don't know.

Q. This question of the saddle horse. You have no distinct recollection of this?

A. No, sir; it doubtless occurred, though, as this is my handwriting.

Q. (Handed paper.) You wrote that letter to Mr. Wilson?

A. Yes, sir.

Q. Is that the power of attorney that accompanied it?

A. Well, I presume it is; it is in about the form they required over there. I can't say that it is not.

EXHIBIT I.

CHICAGO, *Oct.* 2, 1883.

William J. Wilson, Esq.

DEAR SIR: I enclose a power of attorney, which I hope you will acknowledge before a notary public and return to me so I can forward it to England. My partner, Dr. Everett, writes me that the sale will be made, but before the English company will send their agent over to close sale they must have a contract signed by some one authorized by power of attorney to act. I shall send a cable to my partner as soon as I receive the power of att'y from you. I understand that all matters are ready to close the negotiation preparatory to examination except the signing of the contract to sell.

Please sign, acknowledge, and return to me.

Respectfully yours,

(Signed) WILLIAM S. EVERETT.

99 Madison street, Chicago.

78 EXHIBIT J.

Know all men by these presents that I, William J. Wilson, of the city of Denver, State of Colorado, and United States of America, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, George H. Everett, of the city of London, England, my true and lawful attorney, for me and in my name, place, and stead to negotiate and sign a contract for the sale of the "Circle ranch," situated in the States of Colorado, Kansas, and Nebraska, on the Republican river and several of its tributaries, at a point where the three above-named States join in the N. E. part of Colorado and United States of America, at and for the consideration and under the terms of payment as heretofore, to wit, on the 17th day of August, 1883, by me agreed upon in writing—

Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present at the doing thereof, hereby ratifying and confirming all that my said attorney shall do by virtue hereof.

In testimony whereof I have hereunto set my hand and seal this — day of October, A. D. 1883.

—— ——. [SEAL.]

Signed and delivered in the presence of—

1. —— ——.
2. —— ——.

STATE OF COLORADO, } ss:
County of ——, }

I, —— ——, notary public in and for said county, in the State aforesaid, do hereby certify that William J. Wilson, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this — day of October, A. D. 1883.

—— ——.

(Endorsed:) Power of attorney from William J. Wilson, city of Denver, State of Colorado, United States of America, to George H. Everett, 6 Austin Friars, London, England, conferring power to negotiate and sign a contract for sale of Circle ranch.

Q. Did you write a letter when you sent him this power of attorney to sign?

79 A. I am not certain about that; I have not got any letter here, if *he* did.

Q. Did you bring with you any correspondence between yourself and Mr. Wilson?

A. I don't know that I have received more than one letter from Mr. Wilson, if that; I think his correspondence was directed to Mr. Robinson almost entirely.

Q. Did you know Mr. Robinson's handwriting?

A. Well, perhaps I do not——

Q. Look at that please (handing paper).

A. Well, that is Mr. Robinson's letter-head, and I suppose that is his handwriting.

Q. You are familar with it?

A. I have seen it a good deal; it is a very open hand; there is nothing particular about it.

Q. I will ask if he knew of that letter being written, Mr. Everett?

A. No, sir; the first I ever——

Q. When you came to Denver with the English parties how long did you remain?

A. I am under the impression we remained in the neighborhood of three weeks.

Q. Did you remain that long—between two and three weeks?

A. Something like that.

Q. Who was it did the talking for you and Mr. Robinson—you or Mr. Robinson—during that time?

A. Well, we each did our own talking; sometimes, when we were together, perhaps——

Q. I mean with these English parties, the representatives?

A. Oh, well, we both talked a great deal to them.

80 Q. How did it happen you went home?

A. I went home first because the delay was occasioned by reason of the fact there was no party here from England authorized to contract or close the negotiation, and it required some time to get such certificate of authority from London. There was nothing for me to do here and I went home.

Mr. PATTERSON: I will now read the letter. This is a letter addressed to myself, gentlemen, and signed Mr. J. M. Robinson, who was the coplaintiff in this case.

EXHIBIT K.

J. M. Robinson & Co., live stock commission merchants, No. 25 Exchange building, Union stock-yards.

CHICAGO, *May 15th*, 1884.

Hon. Thomas M. Patterson.

DEAR SIR: You are doubtless aware that I could not effect a settlement with Wilson for the am't due us for selling his ranch. We are entitled to fifty thousand ($50,000) of the purchase-money & fifteen thousand commissions; total, $65,000.00. We have spent much time, money, and labor in effecting this sale. We have done what he said we could not do. We have also got him more money than he offered to take or ever expected to get for it. We have accomplished what others failed to do, & all we ask him to do is to pay us in accordance with the agreement he made with us. If you can consistently advise him to settle our claim without litigation you will certainly do us a great favor, & I think you will be conferring as much of a one on Wilson. I do not wish to litigate it and have told him so repeatedly. Our lawyers have decided that we can't sue him until he receives his last payment. This, if we are compelled to bring suit, will defer the matter for nearly two years before we can commence. This is very unfortunate for us. Therefore I thought you might say something to him that would be the means of effecting a settlement, & thereby avail yourself of the blessing pronounced on peace-makers. Anything you can do in this matter will be appreciated.

Very respectfully yours, J. M. ROBINSON.

81 Redirect examination of WILLIAM S. EVERETT by Mr. TAYLOR:

Q. Do you remember this instrument, Mr. Everett?

A. Yes.

Q. This is the contract that was sent by you to Mr. Wilson, or given by you to Mr. Wilson to sign, wherein he reaffirmed the contract that was first introduced here with reference to your commissions?

A. That was sent to him after we heard the English people were on the way to this country.

Q. I ask you if you ever showed this instrument to Mr. Wilson while he was in Chicago?

A. Oh, yes, sir; I think so; I am satisfied I did.

Q. What was said by him with reference to it?

A. If he said anything he said he would not sign any contract or any paper without consulting his lawyer.

Q. Did he make any expressions about the propriety of the terms?

A. He made no objections to this other than he reiterated his repeated promise that he would do as he had agreed to. I desired to have that signed in that way because I was a little apprehensive that perhaps there might be a construction put — that contract I signed in Mr. Patterson's office in December which perhaps would conflict with our interests and conflict with my understanding of our rights. At that time I thought it was due us to be put in the position we were at first.

Q. Did he make any objection to it upon the ground it did not state what had been agreed upon between you?

A. No, sir.

82 Q. His only ground of objection at that time was he wanted to bring it out to Colorado?

A. Yes, sir; he would not sign any paper without showing it to his lawyer.

Q. I would like to ask you right now about this attorney's fee? Mr. Patterson examined you about drawing the contract.

A. Oh, the $150; I think about the time we had an interview with Mr. Patterson — arranged it. He seemed to be busy about some things, and he fixed the hour we met next day but one; then when we met Mr. Wilson said he would not go on with this any further unless we would agree to pay Mr. Patterson's fees. Mr. Patterson was acting for Mr. Wilson. I enquired what the fee was. Mr. Patterson said $150. I thought the fee was reasonable enough, and Mr. Wilson desired the approval of Mr. Robinson, and he telegraphed to Mr. Robinson to know whether he would honor the draft if the sale fell through, and he replied he would, and I signed the agreement, and on the strength of that information signed Mr. Robinson's name to it.

Q. Was the draft to be unconditional?

A. It was to be paid upon condition. It was to be paid in the event the sale failed. In other words, we assumed the payment of the fee if we did not make the sale.

Q. Is that the draft?

A. Yes, sir; that is the draft I signed drawn upon Mr. Robinson and myself.

Q. Examine that.

A. There is no date in the draft. That was signed in Mr. Patterson's office.

Q. Have you any knowledge whether the draft was used or not?

A. I have never heard of it since I signed it until to-day.

83 I assume Mr. Patterson has taken good care of it.

The draft is read in evidence for $165, three days' sight, signed William S. Everett, Chicago, Ills., 99 Madison street.

WITNESS: I think this included Mr. Patterson's fee, and also the printing of these contracts, what expenses Mr. Wilson was put to.

EXHIBIT L.

City National Bank of Denver.

$165.00. DENVER, COLO., —— —, 188–.

At three days' sight pay to the order of William J. Wilson, with exchange, one hundred and sixty-five dollars, value received, and charge to account of—

WILLIAM S. EVERETT.

To J. M. Robinson and Wm. S. Everett, Chicago, Ills., No. 99 Madison St.

EXHIBIT M.

DENVER, COL., *Dec.* 14, '83.

Whereas negotiations are pending between Wm. J. Wilson and the New U. S. Cattle Ranch Co. of London for the sale to the Co. by Wilson, through Wm. S. Everett, Esq., and J. M. Robinson, Esq., of Chicago, of the Circle ranch and stock belonging to Wilson;

And whereas attorney fees to the amount of one hundred and fifty dollars are to be paid by the said Wilson, and the said Wilson does not wish to be at any expense if the said negotiations fail. Now, if for any reason other than a failure of said Wilson to carry into effect his part of the contract to be signed by him hereafter the said negotiations fail and the contract is not perfected we, the undersigned, agree, on demand, to repay to said Wilson the said one hundred and fifty dollars to be paid by him as aforesaid as attorney fees.

(Signed) WILLIAM S. EVERETT.
J. M. ROBINSON,
Per WILLIAM S. EVERETT.

Attest: T. M. PATTERSON.

(Endorsed in pencil:) Agreement about the $150 draft. Dec. 14, 1883.

84 Recross-examination by Mr. PATTERSON:

Q. Do you say you showed this paper to Mr. Wilson when he was in Chicago, in the month of February, 1884?

A. I am under the impression that I took up the original contract, perhaps, and wrote substantially this on the back of it and wanted him to sign that—at least, that is my recollection; it has been some time ago—or a copy that I had kept. (To counsel:) Haven't you got it among the papers there? We kept the original in the office, and this is a copy made of it by my son.

Q. This is a copy that was made after Mr. Wilson left?

A. I think so; I am under the impression; I cannot be positive.

Q. That was what he refused to sign—you say you presented that to him?

A. That is my best understanding and belief.

Q. Does that conversation you reduced to writing show that to be the fact?

A. I don't know whether it shows it; I think it refers to the fact, though.

Q. Would you let me see that conversation as you reduced it to writing?

A. Yes, sir.

The COURT: I can't allow you time to go all over that now.

85 JOHN C. EVERETT, sworn on behalf of the plaintiff, testified as follows:

Direct examination:

Q. Where do you reside?

A. Chicago, Illinois. I am the son of the plaintiff who just testified. I am acquainted with the defendant, Mr. Wilson.

Q. When did you first become acquainted with him?

A. I first met Mr. Wilson when Col. Robinson brought him into the office, some time, I believe, in the latter part of 1883—about August, 1883—for the purpose of giving us a detailed description of his ranch property, which he wished to substitute for the Reynolds ranch we wished to sell to an English company, and at our request Col. Robinson telegraphed Mr. Wilson to come on; give us a detailed statement; give us the necessary papers.

Q. That is when you first met him?

A. He did not give us the papers we wished. We finally compromised on some papers. We asked him at first for a power of attorney and explained the necessity of it; he refused to give it. We then asked him for a bond, which he refused to give, and the result of the conversation and transaction was this contract which has been introduced in evidence.

Q. What is called contract No. 1?

A. Yes, sir; the short one.

Q. Was there any other instrument, to your knowledge, drawn and executed the same day?

A. There was, sir; immediately after that; this is the long contract giving a detailed description of this property.

Q. This is a copy supposed to be sent to England?

A. Yes, sir; this is a copy in my handwriting.

86 Q. You copied that from the one sent to England?

A. I did.

Q. In this instrument the sum specified was $275,000. Can you explain to the jury why and how it came in the drawing of those contracts those sums varied to that extent and what it was for?

A. Mr. Wilson said he wanted $225,000 net for his property. We asked him to make us a commission. He said he could not do that, as this was the amount of money he wanted to receive for it. He, however, put it at $230,000, saying he would allow us $5,000 commission. We told him that would not be sufficient pay for the business we expected to do, and we asked him for permission to add on our commission, which he readily gave. He said he didn't care how much we got for the property; we could sell it for a million if we wished, but that all he wished was $225,000. Consequently we agreed that $50,000 was to be added onto the $225,000 net as value, and that was consequently done. This contract was drawn — $275,000, the intention being to embrace $225,000 to Wilson, $5,000 commissions, and $45,000 strictly in the nature of profit, making a total of fifty thousand dollars.

Q. That was the way this contract came to express the $275,000?

A. Yes, sir.

Q. Did you ever have any further conversation with Mr. Wilson in reference to this transaction?

A. Yes, sir.

Q. State when and as near as you can the conversation.

A. As a result of this contract, which we forwarded to England, the English company, or the promoters, returned this blue contract, which has been introduced in evidence, for a gross amount of $410,000. In that they included our profit and the promoters'

87 profit. We telegraphed Mr. Wilson requesting him to come on and sign these papers. He arrived in the afternoon or put in an appearance in the office rather late in the afternoon, and we only talked with him for about an hour. Our understanding was that Mr. Wilson had agreed and consented to sign the contract, but finally he said he would want to sleep over it. He came back the next morning; he took it with him to his hotel, the Palmer House, and said Mr. Tankersley, from Leadville, a lawyer of some such name, had examined the contract and told him it was a very deceptive contract. It had an upper and under current to it; if he signed it he would be signing away his property; consequently Mr. Wilson said he refused to sign it. Father left, I believe, that afternoon or evening for Texas, and Col. Robinson and I had, I should say, five or six interviews with Wilson during the time he remained in the city, which was three or four days. We met him once at the Palmer House. Mr. Wilson declined to sign it, and then once, I believe, he went to a firm of gentlemen's furnishing goods, Wilson Brothers, and asked him again to sign it. He refused. He then returned or left

the city. I telegraphed my father, urging him to return and come out to Denver to have the contract modified to suit Mr. Wilson—cut out this under current if possible. Father returned in the course of ten days or two weeks, and at once proceeded to Denver.

Q. You know nothing, of course, of your own knowledge what took place in Denver?

A. I do not.

Q. Did Wilson visit Chicago again before the completion of these matters?

A. He did.

Q. About what time was that, Mr. Everett?

88 A. That was along the early part of February, 1883 or 1884. I am not certain which.

Q. Were you present at any—think about that. Wasn't it in 1884?

A. Well, it was in February just preceding March in which the sale was closed. I think it was in 1883; the papers will show, at any rate; it was 1884. This first contract was signed August, 1883; then it was in 1884 subsequent.

Q. Were you at any interviews had with Mr. Wilson in reference to this matter on that visit in February?

A. Yes, sir; we had received cable notification that Mr. Wilkes, the accredited agent or expert of the English company, had sailed from London and would arrive within a certain time. We sent word to Mr. Wilson to that effect, and wished him to come on and sign a stipulation in regard to our commission, wishing it reduced to writing, as my understanding was another contract had intervened between the original contract and the stipulation for a second commission. We thought it would be safer to have a new stipulation. Mr. Wilson came on and appeared in the office without our requesting him—that is, we didn't expect him to come; we had requested him to send on this stipulation. Mr. Wilson came in and we had a conversation there, the amount of which was father asked him to reduce our understanding to writing, which he stated he could not do. He stated he would pay all he agreed to do. His word was as good as his bond. Father offered him a stipulation in writing. Mr. Wilson refused to sign it, saying he did not understand this instrument; that he wanted to take it home and submit it to his attorney. I believe he left with a copy, though I am not certain. At that time or just before leaving he said he was very anxious to close this sale; he was in need of money; that if we would bring him the purchaser and close the sale for $225,000

89 he would do all he had promised; he would give us—or, speaking to my father and Mr. Robinson, he said if they would come out and assist in consummating the sale he would give them $10,000. He said, I will do even better; if you will help me put through the sale, without counting, selling by book account, you will save me from 25 to 30 thousand dollars; I will divide my profits with you. He said just as he was leaving, I am very close at the commencement of any business, but very liberal at the close; at least that is the reputation I have wherever I am known; ten thou-

sand dollars or five thousand dollars won't stand in the way. In addition, he told my father he would give him carriage horses.

Q. Now, with reference to the time that your father presented him with this instrument reduced to writing, his promises about paying him this commission, what was the exact objection Mr. Wilson made to signing that? Did he make any objections to it because of the form, the substance, of the contract or for some other reason?

A. The objection made to it was that there might be some technical catch about it which he didn't understand, and that he would not sign any instrument of writing until he had submitted it to his lawyers. He made no objection to the substance or matter contained in it.

Q. He made no objection to its not containing what had passed between you verbally as to the payments?

A. No, sir.

Cross-examination of JOHN C. EVERETT by Mr. PATTERSON:

Q. What is your full name?

A. John C. Everett.

Q. Are you the son of the plaintiff?

A. I am.

90 Q. What is your age?

A. I am 25 in March.

Q. Are you in the business?

A. I am. I am an attorney.

Q. With your father?

A. Yes, sir.

Q. You say you first saw Mr. Wilson in August, 1883?

A. Yes, sir.

Q. And the object—or at least he was there and you were engaged in talking about this disposal of his ranch for him?

A. Yes, sir.

Q. He fixed the price he wanted net at $225,000?

A. He did, sir.

Q. You wanted some commissions—your father did; he said he could not afford to pay it or would not, but to cover it would fix the price at $230,000; $5,000 could be taken out as commissions?

A. The result of the conversation was that.

Q. (Question repeated.)

A. Yes, sir.

Q. That did not satisfy you?

A. No, sir.

Q. He wanted to make more money, so it was talked about putting the property on the market at a larger price?

A. Yes, sir.

Q. Mr. Wilson said to your father he didn't care how much more he got for it, if it was a million dollars; he might sell it for what he pleased so he got $225,000 for it?

A. Yes, sir.

91 Q. Thereupon there were some talk about this matter, your father and Mr. Wilson agreeing $50,000 would be a fair additional price?

A. Yes, sir.

Q. The ranch and stock ought to bring that much more?

A. Yes, sir.

Q. And if it did, that was to go to your father?

A. Yes.

Q. So that, as far as Mr. Wilson was concerned, he was indifferent how much was put in?

A. He was.

Q. The matter allowed your father?

A. I don't remember, sir; I presume he didn't oppose it, because he thought the ranch was reasonably worth it.

Q. He used an exorbitant figure when speaking of a million?

A. That was merely figurative, of course.

Q. Acted upon that theory all the way through his conversation, didn't he, that your father could make all he could out of it beyond the price net he was to get?

A. Yes, sir.

Q. Your father concluded and Mr. Wilson assented to put it; it was based upon that understanding that these two agreements of August 17th were made out?

A. Yes, sir.

Q. Now, I understand the next time you saw Mr. Wilson was after this English contract, made in England, fixing the selling price at $410,000?

A. Yes, sir.

Q. Mr. Wilson was communicated with, and as the result of that he came to Chicago; is that right?

92 A. Yes, sir.

Q. Where did the interview take place between you and Mr. Wilson, or at least your father and yourself—in your office?

A. In our office.

Q. Mr. Wilson concluded he would like to sleep on that contract; he took it away with him?

A. Yes, sir.

Q. He came back and told you the conversation he had had with Mr. Tankersley?

A. Yes, sir.

Q. There were several currents in it, an under current and so on, and he would not sign it?

A. Yes, sir.

Q. You got several cablegrams, and you telegraphed your father; he took these English contracts—came on to Denver to try and have it fixed up?

A. He came on to Denver.

Q. That is as far as you know?

A. Yes, sir.

Q. The next time you saw Mr. Wilson was some time in February, 1884?

A. Yes, sir.

Q. And you say that he had a conversation with your father, in which he told your father he would give your father $10,000; why?

A. If they would come out and assist in putting through the sale.

Q. Your father was already interested to the extent of $50,000 in putting it through?

A. As we understood it, our obligations did not extend beyond bringing the parties together—consummating the sale by con-
93 tract; there was no contract binding us to come out to Denver personally to assist in consummating the sale.

Q. Didn't you understand your father was interested in seeing that that contract was carried into effect, fixed, made permanent?

A. Certainly, sir; Mr. Wilson seemed to desire our presence—made an offer.

Q. Was not your father entirely willing to come out—desirous to come out?

A. I presume he might possibly have come out; at any rate, he came out under this promise.

Q. Isn't it a fact this ten thousand dollars was spoken of in connection with inducing the English people to accept the cattle, range delivery?

A. There were two promises; one was if you come out and assist in putting through the sale I will pay you ten thousand dollars extra, and I will do even better than that; if you will induce the English parties to accept the cattle or the ranch according to the book account you can save me from 25 to 30 thousand dollars, and I will divide even my profits; that would make an addition of from 25 hundred to five thousand dollars in addition to the ten thousand promised.

Q. If he could induce the company to accept range delivery it would save from 25 to 30 thousand dollars?

A. So he said.

Q. And he agreed to divide those profits if they would accept the range delivery; that would make the half——

A. We understood it would be adding to ten thousand the difference between the ten thousand and what the half would be. In other words, we were to get ten thousand any way, and if we
94 induced the English company to accept the range count we were to get enough more to make up what one-half of his profits would be.

Q. Who was it wrote this conversation out?

A. My father; as soon as Mr. Wilson had closed the door.

Q. You all got together, did you, and studied and agreed upon what had occurred?

A. I suggested to my father that he put it in writing, as I had an idea the matter would terminate in a trial; so, as a precautionary measure—we had had so much trouble with Mr. Wilson I imagined there would be one—as a precautionary measure——

Q. Did you and Mr. Robinson put your heads together?

A. No, sir; my father wrote it and then read it, and says, Is that correct? and Robinson and I both assented to it.

Q. Do you recollect now whether or not that memorandum of a conversation recited that the consideration for the ten thousand dollars that Mr. Wilson agreed to pay extra was to be that your father should carry out and help to put the sale through?

A. I can't tell you, sir. My remembrance is based principally upon direct remembrance of the conversation; it is not dependent upon——

Q. Don't you know that in that memorandum you made, as you heard it read, there was not a word said about your father getting ten thousand dollars for coming out and helping to put the sale through?

A. I don't know; I have not examined the memorandum critically; I looked it over.

Q. You cannot recollect how it read when it was read?

A. I cannot remember the words, but I remember the substance—at least I think I do. What I have detailed is the substance of the conversation as I remember it.

95 Q. You don't recollect, then, what the memorandum contained that you wrote—that is, as to the particulars, minutiæ?

A. Not particularly, specifically; no, sir.

Q. Then you say that the contract for commissions was shown Mr. Wilson?

A. Yes, sir.

Q. Mr. Wilson did not pretend or claim that the contract for commissions had ever been abrogated, did he, when it was shown to him?

A. No, sir; he said that he would pay just what he had agreed to pay. In other words, he said, Our understanding—at least in substance—our understanding is all right, but I refuse to put my name to anything in writing because I am afraid of some technical catch.

Q. Your father still held the original contract made by Wilson; it was shown to Wilson?

A. Yes, sir.

Q. Mr. Wilson did not deny that the original contract was in existence?

A. No, sir.

Q. He only refused to sign something additional on the back of it?

A. I believe so; yes, sir.

Q. State to the jury the reasons he gave for not signing that additional.

A. The reasons he gave were he was afraid of some technical catch in it; that he would not sign it until he had submitted it to his attorney.

Q. That was the whole of that part; did he say that that part your father had written upon it expressed the contract or did

96 he simply remain silent so far as objections to it were concerned?

A. He said he would pay what he had agreed to pay, but he refused to sign that instrument, because, as I said, he was afraid of some technical catch.

Q. In other words, he would not sign it until he had submitted it to his attorneys?

A. Yes, sir.

Q. He didn't say he understood the effect and meaning of what was on the back of that instrument, did he?

A. Well, he gave me the impression he understood.

Q. I am not asking you for your impression; I ask you for his language.

A. I cannot give you that any further than I do.

CHARLES J. HUGHES, Esq., first being duly sworn on behalf of the plaintiffs, testified as follows:

Direct examination by Mr. MCNEAL:

Q. What is your business, Mr. Hughes?

A. Attorney-at-law.

Q. You were so acting as attorney in 1883 and 1884?

A. Yes, sir.

Q. Did you at that time represent as attorney the English company who purchased Mr. Wilson's ranch?

A. Yes, sir—that is, in 1884.

Q. In 1883?

97 A. No, sir; not until 1884. I had nothing to do with that until they came here, I think, in February, 1884.

Q. Were you connected with all the negotiations that took place—that is, so far as counsel, after they came here—so far as their dealings with Mr. Wilson were concerned?

A. I was.

Q. Do you remember about what length of time it was from the time the English representatives arrived in Denver until this contract was closed up?

A. Well, I think the payment on the contract was made the 21st of April, and they got here some time in February.

Q. Did you at that time see Mr. Everett and Mr. Robinson, who has since died?

A. Yes, sir.

Q. For how long were they here, about?

A. I could not undertake to state the entire time. I think they went to the ranch with Mr. Dickie, who represented the company. They were several weeks, but the exact time I don't remember. Mr. Robinson was here at one time when Mr. Everett was away; I remember that.

Q. They did not both remain, to your knowledge or recollection, until it was closed up?

A. No, sir; my recollection is Mr. Robinson was in our office about the 23rd of April; the first payment of money, I think, was made the 21st.

Q. Did Mr. Robinson remain in Denver from the time they all arrived in February?

A. I cannot be sure. He was here, I know, and went to the ranch. I saw him at different times during the negotiation; I think
98 a couple of days or so afterwards I saw him. I know he was in the office with Mr. Wilson, myself, Mr. Wilkes, and Judge Wells; I think two or three days after the money was paid at the City National Bank.

Q. What amount of money was paid at the time the papers were executed?

A. Well, there had been a good many papers executed, written up prior to the 21st of April; on that day, at the City National Bank, we placed to Wilson's credit $47,000—$3,000 to be paid, making $50,000 the first payment.

Q. $50,000; do you remember what amount that was part of?

A. My recollection is $63,800, some odd dollars, perhaps, was to be the payment; that payment was cut in two and the first made $50,000; then the $30,000 to be paid later; I think, perhaps, in June.

Q. You say that $50,000 was paid in cash before the papers were exchanged?

A. At the time of the exchange of the papers it was intended to be a simultaneous matter, the payment of the money and the delivery of the papers.

Q. Were the modifications or changes in the contract which had been previously executed by Mr. Wilson, which is dated the 14th of December, I believe, 1883, before the sale was consummated?

A. Before the payment of this money?

Q. Yes, sir.

A. That is what led to a good deal of delay.

Q. At whose request and for whose benefit were those changes made?

A. Well, quite a number of them for Mr. Wilson's; I cannot undertake, without reference to the papers, to state what they were.

99 Q. There were several changes?

A. Yes, sir; I remember some of them; some of them might be recalled by looking at the papers.

Q. At the time this $50,000 was paid what obligation was given, if any, to secure the balance of the purchase-money—how was it secured to be paid?

A. There was a chattel mortgage given upon the personal property and a mortgage.

Q. Do you recognize this as the contracts that were executed?

A. Yes, sir; the chattel mortgage executed by the English company.

Q. The United States Cattle Ranch Company to Mr. Wilson?

A. Yes, sir. As Mr. Patterson says, I think a number of the papers were executed in duplicate in order to make the records simultaneous. It was deemed important. There were a number, I know.

Q. Is this the contract?

A. I know this is on the type-writer that was in our office. Mr. Knoblock was the notary that was in our office. That is his acknowledgement. I see Mr. Patterson and I witnessed it. That is my writing.

Mr. HUGHES: There was also a bond or obligation to pay the money which those were given to secure. Instead of a note it was in the form of a bond. The contract called for a bond and we drew it in the form of a bond.

Q. Do you recognize that as the bond that was given to Mr. Wilson by the company that you represented at the time you drew these papers?

A. Yes, sir. I witnessed that also in company with Mr. Patterson.

Q. Do you know of your own knowledge of the subsequent payment to Mr. Wilson or to the bank for his use any payments
100 secured by this bond?

A. There was $13,000 paid later; I think I have a memorandum which, perhaps, shows the date as well as the amount; it was some different; it was provided less 6%, which was to be put to his credit—$13,019 to be paid Mr. Wilson direct at 6%—$13,850 paid——

Q. To whom?

A. That was to be paid to Martin Wilkes; it is 6%——

Q. That, you say, modified the original document?

A. When I first saw it—it was printed, executed in England; then alterations and modifications were made here.

Q. That is the paper you refer to?

A. That is the form in which it came, the original; afterwards there were additions made to it of which I have spoken. This one which you handed me was modified after they came here by negotiations running down to the time of the 21st of April.

Q. Was there any change made in the contract price?

A. No, sir; I think the printed contract you speak of was not changed. The day of payment was changed by a written endorsement in order to enable us to correspond with the people in London and see if certain modifications desired could be made.

Q. (Witness is handed exhibit marked P.) Examine that and state whether you recognize that as the other modification to the contract and the one under which the sale was finally consummated.

A. Well, without reading it over, I could not say; I see one clause written in the printing which I remember was modified. That is the clause making time of the essence of the contract that was modified when the form of the mortgage way—the mortgage provided originally that three-fourths of the payment should go to Wilson
101 and one-fourth—it was modified afterwards to change that. I think the changes were made in duplicate and that each took a copy. Mr. Dickie, I know, for the company, took a copy as modified, and I think each party had one.

Q. So far as the price is concerned, I understand you made no change in that, and no change was made in the terms except as to when the first cash payment should be paid?

A. That I know was changed and made two payments, one of fifty, the other of thirteen, and the clause providing that Wilson should have three-fourths of the sale of cattle as made was changed.

Q. Was there any change made as to the property to be conveyed?

A. No, sir; the personal property was to remain the same. There was a change in the bond given by Mr. Wilson to secure the manual delivery of the cattle instead of conveying the land as the contract—a bond was given. He conveyed, instead of 3,000 acres of freehold land, I think something over 400 and gave his bond for the other.

Q. At whose request was that?

A. Mr. Wilson did not have the land to convey, or, at least, could not produce evidence of title to us, and gave his bond. In the bond, I think, the land was specified by quarter sections or in some way throwing it upon the stream giving water front.

Q. In all other respects, so far as you remember, all material respects, the contract as originally presented you was carried out and the sale consummated after that?

A. Yes, sir; it was considered to be the consummation of that contract. These were changes in detail that were found necessary when the parties came and said to close it up.

Q. Is that, do you know, a duplicate of the bond given by
102 Mr. Wilson instead of the conveyance of the freehold land, as contemplated by the other contract?

A. Yes, sir; I think it is. I know it is witnessed by Mr. Patterson and myself. I know we witnessed all the papers. It is acknowledged by Mr. Knoblock the 21st of April; that is the day the payment was made; that is the day the papers were exchanged. (Paper spoken of by witness is marked Exhibit Q.) I have a list of the papers that were left at the bank; they gave us a receipt; that is one of the escrow that came from there.

Q. Do you know of any other payment being made Mr. Hughes by the company?

A. Personally I had nothing to do with any other; making the $63,850, I know nothing personally; I only know cattle were sold after this sale had been closed up.

Q. Were you present at any interview between Mr. Robinson, one of the plaintiffs, now deceased, and Mr. Wilson?

A. They were in the office on the 23rd of April; it was the day after the payment; this was on the 21st, I think; it was a day or two later; I think the 23rd.

Q. Where was that interview?

A. That was in our office—in my office.

Q. With reference to what did the interview occur?

A. It was concerning the matter of the commission claimed by Mr. Robinson and the payments.

Q. What was stated there by Mr. Wilson and by Mr. Robinson on that subject in detail?

A. I cannot undertake to give the conversation. I remember the material matters to which my attention was called. Mr. Wilson

made a tender to Mr. Robinson or offered to make a tender
103 of five thousand dollars, which Mr. Robinson declined on the ground that more was due.

Q. Was there anything said by Mr. Wilson to Mr. Robinson as to his claim that the balance of the money that was to be paid—any other sum than five thousand dollars was to be made paid—payable on any contingency?

Objected to.

A. I don't remember.

Q. Was there anything claimed—did Mr. Wilson say anything about not being indebted to Mr. Robinson until he had realized from the sale—any conversation of that kind at that time between Mr. Wilson and Mr. Robinson?

A. As I remember, Mr. Wilson contended he did not owe the amount which Mr. Robinson claimed. On the contrary, Mr. Robinson said he was then indebted in the sum of five thousand dollars, and that other sums might be paid at other times, and that a large sum—I don't remember the amount; it was a very considerable amount—seemed to be in dispute as to when it should be paid—at what time. I know Mr. Robinson claimed it should be paid them. Mr. Wilson refused that claim. What his claim was with regard to it I could not undertake to say, except he said the only sum he was then indebted to which they had a present right was five thousand dollars. He was ready and desired to make tender of that.

Q. The balance Wilson claimed was not due until some contingency which had not yet happened?

A. Yes, sir; Mr. Robinson claimed it was to be paid then. They had the right to have it paid or secured at that time. Judge Wells
was present, Mr. Robinson, Mr. Wilkes. Of course they didn't
104 agree—Mr. Wilson and Robinson.

Q. Did Mr. Wilson ever comply with this bond put in evidence and give this English company title to this land?

Objected to as immaterial.

A. No, sir.

Mr. McNeal: Some time after this Mr. Wilson claimed a default had been made in the obligation on the part of the English company and proceeded to sell this property under this mortgage for the alleged failure to comply with the contract. I don't know myself that we are at all interested in the fact as to what he was entitled to, but in some aspect of it it may be important, from the fact as to whether or not Mr. Wilson at that time had complied with his own contract.

Cross-examination by Mr. Patterson:

Q. Mr. Hughes, you became the attorney of the United States Cattle Ranch Company; it was the purchaser of this ranch in the spring of 1884, after Mr. Dickie and Mr. Wilkes, representing the company, came out here?

A. Yes, sir; the first day they arrived Mr. Charles Dickie brought me a letter of introduction and of instructions from Davidson and Morris, the attorneys in London, and a letter from Blatchford, Seward, and Griswold and Da Costa, in New York. On that day we were employed by the company in this matter.

Q. You and I and the parties commenced what proved to be very tedious negotiation?

A. Yes, sir; very protracted and persistent.

Q. And there were modifications made for the benefit of both sides?

105 A. Yes, sir.

Q. That is to say, one would concede what he considered an advantage to the other in consideration of getting an advantage to himself?

A. Yes, sir.

Q. A sort of give and take?

A. One would demand something; the other would refuse to concede until he got something in return.

Q. Do you know whose handwriting that is?

A. That looks like the writing of the book-keeper Mr. Wilson had. I forget his name; an elderly gentleman. I don't recognize that writing; it is not from our office. Mr. Knoblock writes a very peculiar hand.

Q. See if we can agree upon what the modifications were. I believe, in the first place, as counsel, we required some changes with reference to the chattel mortgage, in order that it might be safe from a legal standpoint?

A. Yes, sir; you raised the point for Mr. Wilson that, as only three-fourths of the proceeds of cattle sales were to go to him, that was virtually to that extent a mortgage for the benefit of the mortgage and might not be good as to other creditors interested. Then as to the payment, that was divided into two — of fifty and thirteen thousand dollars.

Q. It was stipulated, as I understand, that Mr. Wilson should furnish all the cash necessary to run the ranch for the first year?

A. Well, he was also to get three-fourths of the sale of the stock.

Q. Wasn't he to get all of the sale of the live stock and to

106 get nothing from the sale of stock of the company?

A. That, I believe, as he took away from the company the fourth they were going to use in maintaining the ranch, he was then to keep up the ranch. In case it was sold under the mortgage he was not to be paid; in case he didn't the money he advanced was to be repaid to him. There was something about delivering the cattle which he undertook; that they had arranged to use the ranch property in that delivery; he was to allow something for that; I don't remember the terms of that.

Q. The bulk of the cash was for the payment of $63,000; the balance was divided into two annual payments, one-half due in one year, the other half due in two years was stated in the bond?

A. Yes; I think the bond states what draft it was.

Q. Now, you say that on the 21st of April, when the papers were

all signed, the sum of forty-seven thousand dollars was put to Mr. Wilson's credit in the bank?

A. Yes, sir; I think I had to endorse, sign, the check.

Q. The other three to be paid on his account?

A. The contract states the remainder of $13,700 and some odd dollars was paid sixty days after—that is, those are all the payments I had anything to do with. Of course, I understood from Mr. Wilson some cattle were sold; the amount I don't know, whatever it was.

Q. Some cattle were sold under the terms of the contract?

A. Yes, sir; the mortgage provides; the contract certainly did. From the cattle which would be sold the proceeds were to go to Wilson in payment on the amount he was to receive. That was done. The exact amounts I don't know, and I only know as Mr. Wilson made statements to me; that had been done to some
107 extent. I had nothing to do with that personally.

Counsel for plaintiff now read in evidence to the jury the bond, beginning at "Know all men by these presents that the New United States Cattle Ranch Company, Limited, &c., *are* a corporation duly organized, &c., are held and firmly bound in the penal sum of $275,000, lawful money of the United States."

Mr. Taylor offers in evidence a stipulation relating to the advertisement of cattle made by defendant.

Mr. PATTERSON: I do not know to what extent testimony of this character is admissible under the pleadings. As your honor recollects, the suit is based upon the account. The testimony shows, we think, quite conclusively that the payment of this money or, at least, the principal part of it was dependent upon its coming into Mr. Wilson's hands—that the same amount came into his hands, which would be over $205,000, whatever was over—so what they now offer to introduce under proof and under the pleadings, as we have it, is the advertisement that was made by Mr. Wilson for the sale of this personal property under the chattel mortgage to secure the bond that has just been read to the jury. We object upon the ground that it is immaterial and irrelevant and cannot be introduced under the issues in the case.

Mr. TAYLOR: That is the advertisement under which the mortgage was foreclosed, specifying the amount of money received and the amount of money yet due, seeking to obtain that money by virtue of proceedings under the mortgage. Of course, the stipulation in existence admits that testimony unless it is immaterial to the issue.

Mr. PATTERSON: We agree that it is the advertisement, pro-
108 vided it is competent, legal testimony; we do not require them to make proof in a technical way.

The COURT: I think you can put it in, sir. We will consider its relevancy hereafter.

Counsel read advertisement and notice from newspaper as follows: "Whereas the New United States Cattle Ranch Company, &c., by Charles Dickie, &c."

S. S. GREEN sworn.

Direct examination by Mr. TAYLOR:

Q. Are you acquainted with Mr. Wilson?
A. I am.
Q. Are you acquainted with the locality of the Circle ranch?
A. Well, I have been there once or twice; I am not particularly acquainted with the country.
Q. Were you there at the time there was a sale made under a chattel mortgage advertisement by Mr. Wilson?
A. I was.
Q. Did you have any arrangement with Mr. Wilson prior to that sale with reference to buying any of his cattle?
A. No.
Q. Did you have any conversation with him?
A. I did, with reference to the matter; he asked me to go down there—if I would not go down and be there at the sale.
Q. And on his invitation you went down?
A. I went.

109 Q. Can you tell to the jury how many cattle were sold there under the mortgage?
A. Well, not exactly.
Q. About, sir, as near as you can estimate it?
A. How do you mean?
Q. How many cattle were delivered that day—absolutely sold?
A. There were something like 3,400 gathered and delivered; that didn't include the scattered.
Q. How many of those cattle did you buy, Mr. Green?
A. Well, I can't tell you just exactly; something less than 3,000; between 2,900 and 3,000.
Q. Were you buying those cattle absolutely and exclusively for yourself, or were you buying them for Mr. Wilson under an arrangement with Mr. Wilson?
A. I was buying, myself; I had no arrangement with Mr. Wilson whatever, either about the price or about the cattle.
Q. How many cattle did you buy?
A. As I said before, I cannot give the exact number; it is between 2,900 and 3,000.
Q. What did you pay for them?
A. $20 a head.
Q. Did any one bid against you?
A. Yes, sir.
Q. Who did?
A. Quite a number.
Q. How did it happen that you bid; did you buy by the head?

110 A. I bought by the head; I was to take the first beef steers cut out and put into the corral; something over 500 head of steers. They did not have the exact number of steers in the corral, but they sold the steers with the understanding that they should sell 500; the balance, sold them in two lots; first they sold 250 head and then they sold the other 250 head, with the under-

standing two purchasers should take them; then the buyers should divide the steers between themselves any way they could agree upon.

Q. Do you know who bought the five hundred?

A. Mr. Gebhart bought 250, and Mr. Yetzer, of Iowa, 250.

Q. Can you give me the price or anywhere near the price of these steers?

A. Well, say between $31 and $32; I cannot give you the exact price. One bunch I know brought a little more than the other.

Q. You think, as near as you can remember, you bought 2,900?

A. 2,900. I think it was nearer 3,000 than it was 2,900. That is my recollection.

Q. What was the full amount of the purchase price for the lot?

A. I don't know; I don't remember now. I bought some other things—saddles, harnesses, wagons, horses.

Q. You bought 250 horses at $23.75 a head?

A. If I remember right, I think that was the price.

Q. Now, Mr. Green, did you have any conversation with Mr. Wilson about your bidding on these cattle before they were sold?

A. No, sir; not a word. I had a conversation with him in regard to the payments. He asked if I would buy. I told him I was not prepared; I would have to have time.

Q. Was anything said about what you should pay for them; did he agree to give you time?

111 A. He did.

Q. What length of time?

A. One and two years. There was nothing said about the price of the cattle. I don't remember how much that amounted to, but I remember what the whole thing amounted to, my purchase—that is, pretty near.

Q. What did it all amount to?

A. Something—I paid $10,000 down—that is, when I came to Denver.

Q. How did you do about the balance?

A. I gave him my notes for a portion sold—the scattered cattle.

Q. Did you buy the scattered cattle?

A. I did—that is, after all that had been gathered were sold.

—. Then they sold whatever might be upon the range. How much did you pay for the deal?

A. I think it was $5.40 a head.

Q. Were those on the range sold by the head?

A. By the head.

Q. How many did you gather?

A. I didn't gather—I didn't get any; I resold them without gathering them. I sold to Mr. Tucker.

Q. How many did you bid off at that price?

A. There was something over 3,300.

Q. What did you say you bid a head?

A. I think it was $5.40.

Q. Was there any guarantee to you that there were any number of cattle?

A. No, sir.

Q. You bid off how many?

112 A. I think it was 3,300 and some odd head; that is my recollection.

Q. You don't know?

A. Of course, Mr. Tucker gathered them.

Q. What did Mr. Tucker pay you?

A. He paid me $30,000 for the brand. I reserved the right to use the brand in two counties.

Q. Do you mean to say this bid for the scattered cattle and your other purchases all footed up to 83 or 85 thousand?

A. About that. I am not positive as to the exact amount.

Q. When did you sell these cattle to Mr. Tucker?

A. I do not remember; some time after that.

Q. You say you bought 3,300 head at the time?

A. About that.

Q. At $5.40 a head.

A. Yes.

Q. That would make somewhere in the neighborhood of $17,000 or $18,000?

A. I suppose it would.

Q. Mr. Tucker was there at the time?

A. Yes, sir.

Q. Did he make any bid?

A. He did.

Q. Did he on the range cattle?

A. I don't know whether he did on the range cattle or not.

Q. Who helped in making this count?

A. The count on the cattle we had gathered I think Mr. Tucker helped. I counted myself; there was some other man—I don't remember who it was. We had to have some counters repre-

113 senting Mr. Wilson and some representing the cattle company.

Q. Mr. Wilkes himself?

A. I don't think he counted the cattle. I think he had men counting the cattle. That is my recollection.

Q. Were all the bulls gathered up in the herd?

A. I could not say. Some of them were out with the scattered cattle. That is my supposition.

Q. Do you know how many bulls you did get?

A. No, sir.

Q. What did you do with these cattle?

A. Just counted — moved them to the White river in Garfield county.

Q. How much did you say you had paid Mr. Wilson down?

A. I paid him $10,000.

Q. Is that all you paid him?

A. That is all I paid him.

Q. You paid him $10,000 and you were to pay him the balance in one and two years. You are in default in the payments?

A. I am; like a good many other cowmen.

Q. What did you do with the 30,000 you got from Mr. Tucker?

A. Turned it over to Mr. Wilson.
Q. Turned over the 30,000 you got from Mr. Tucker?
A. Yes.
Q. If you turned that in it makes about $40,000 you paid?
A. You might term it so.
Q. Is it not so?
A. Yes, sir. Mr. Wilson holds my note for $18,000, with a credit for my labor on it and a mortgage. He has — mortgage on the cattle over in Garfield county.

114 Q. What did you do with the horses?
A. Took them to Garfield county, too.

Q. Have you got the horses there yet?
A. I have.
Q. Mr. Wilson has got no interest in your herd?
A. He has no interest unless he closes me out.
Q. No interest except the mortgage?
A. Except the mortgage.
Q. Do you know who bought the balance—3,400 head of cattle?
A. I did; all but the beef steers; the beef steers must be the difference.
Q. You bought all of them?
A. Bought all except 500 beef steers Mr. Yetzer and Mr. Gebhart bought. When I saw the advertisement I wrote to a friend of mine in Iowa by the name of Yetzer, knowing him to be in position to buy if the steers would suit him. When I got to Max station I found Mr. Yetzer there. He came to buy cattle and he bought 250 head.
Q. Has Mr. Wilson any cattle in Garfield county?
A. They are on my ranch. I look after his cattle; get a dollar a head per year for managing his cattle.
Q. How many has he got there?
A. 1,285 head he turned over.
Q. Where did he bring them from?
A. I understood from Pueblo; all steers; it is a steer herd.

Cross-examination:

Q. Was not Mr. Albert Butters there?
A. Yes, sir.

115 Q. Wasn't he bidding; didn't he buy some stock?
A. Yes, sir.

Q. Mr. Joseph C. Yetzer, he was there?
A. Yes, sir; he was the gentleman I wrote to in Iowa.
Q. Mr. Gebhart?
A. He was there.
Q. Were there quite a number of others there from Nebraska?
A. Yes, sir; there were a number. Scherrer, Jacob Scherrer, was there; Mr. Tucker. Scherrer was bidding. Mr. Bachelor, he cried, I believe.
A. I don't know him.

Redirect examination:

Q. Was this a fair market price for the cattle, or was it under the market price or the value of the cattle at that time?

Objected to as incompetent, irrelevant, & immaterial.
Objection sustained.

LEDYARD R. TUCKER, sworn for plaintiff, examined in chief by Mr. MCNEAL:

Q. Are you acquainted with Mr. Wilson?
A. Yes, sir.
Q. You have been associated in business with him?
A. Yes, sir; I have.
Q. How long?
A. Probably ten years—nine or ten years.
Q. During that time your relations have been very intimate and still are?
116 A. Yes, sir.
Q. Were you present at the time of the sale under this mortgage that has been testified to here?
A. Yes, sir.
Q. Did you take any part in the matter in any of its details?
A. I believe I made a bid or two; I don't remember so much about the bidding.
Q. Did you take part in the management of it in any way?
A. Counting the cattle.
Q. Looking after them?
A. Well, after the sale of the cattle I assisted in the count by request of Mr. Green, the purchaser.
Q. Were you present when the cattle were sold?
A. Yes, sir.
Q. Do you know about how many cattle were sold?
A. They were sold in different bunches; I don't know the sum total. I know there were 500 beef steers sold, 59 cows—I think, 59 beef cows—and I think the cattle counted out 2,902.
Q. That constitutes, then, all the cattle that were gathered before—that were gathered on the ground at the time of the sale?
A. I think it did.
Q. What else was sold, Mr. Tucker?
A. There was a number of horses; I don't remember what number.
Q. Do you know whether they were bunched together, gathered there in the presence of the parties selling, or were part of them supposed to be on the range?
A. I don't remember how that sale was made; whether it was understood that everything not gathered went with the sale or not. I think, though, it was a sale of just what was there; it must
117 have been so much a head.
Q. You say you are not certain that sale applied just to the horses gathered?
A. My impression now is it was those gathered.

Q. Do you know how many horses were sold?
A. I don't remember positively.
Q. As near as you can remember, Mr. Tucker?
A. Well, I think it was over 200 head.
Q. Mr. Greene testified there were 250 head.
A. I can't state.
Q. Can you state there were over 200?
A. I think there was.
Q. Now, what did the beef cattle bring?
A. They were sold in two bunches. The first bunch brought—I don't remember; I think it was $31.75; the other, thirty-one something; something over 31.
Q. What did the 2,902 head of cattle sell for?
A. I believe it was $20.
Q. Were there any other cattle sold than the ones gathered there on the ground; did you include the 59 beef cows in this valuation? You said the beef cattle were sold in two lots—one for $31.75 and the other for $31 and a fraction. Did that include the fat cows?
A. No, sir.
Q. What did they sell for?
A. $20, I think.
Q. They sold for the same as the range cattle?
A. I don't remember.
Q. Were there any other cattle sold?
A. The loose cattle were sold—the cattle not gathered there.
118 Q. How many of those were sold?
A. I think they figured up there should be 3,100 and some head of cattle—maybe 3,300; I don't remember.
Q. You say 31 or 3,300?
A. It wasn't an even number, I know. They had made the deduction from the books what it should be.

Mrs. ROBINSON sworn for plaintiff.

Examined by Mr. TAYLOR:

Q. Where do you reside, Mrs. Robinson?
A. In Chicago.
Q. What was your relation with Mr. Robinson, one of the plaintiffs in this case, before his death?
A. He was my husband.
Q. Are you acquainted with the defendant in this case, Mr. Wilson?
A. I am; have been for some time.
Q. How long have you been acquainted with him?
A. The first acquaintance was in 1882; it may have been 1883; he visited the house a number of times.
Q. He has visited your house?
A. Yes, sir.
Q. Have you got any of his letters?
A. Yes, sir; one came. Would you like to see them? (Produces letters.)

Plaintiff here offers in evidence letter marked "Exhibit S."

Q. That has been in your possession, has it?

A. ——.

119 Counsel reads letter dated January 6th, 1884, as follows:

EXHIBIT S.

DENVER, *Jan.* 6, '84.

Mr. J. M. Robinson. U. S. y'ds, Chicago.

MY KIND SIR: I have not heard a word from you folks since Mr. Evert returned to Chicago. How is the cattle trade progressing. Tell him to keep me posted, and I would be pleased to have you let me hear from you as soon as convenient. Direct to general delivery, Washington city. I expect to be there the 10th of this month, and from there to N. York, care Fifth Av. Hotel. Wishing you all happy New Year, I remain yours respectfully,

W. J. WILSON.

Q. Mrs. Robinson, you say that Mr. Wilson visited your house?

A. I think he was at our house before he went to Mr. Everett's office. I think he went to the yards, and again came to the house.

Q. Visiting you in a social way, was he not?

A. Yes, sir.

Q. Did he ever have any conversation with you or make any statement with reference to Mr. Robinson having anything to do with this business?

A. It was talked of just as familiarly as speaking of the weather by them.

Q. You tell the jury what it was.

A. Well, there was nothing as to the amount. He spoke of its being a big thing, if Mr. Robinson could put through the trade they were trying. He spoke of it different times, not only the first time, but up till the time that he came, when these papers were got out.

Q. To whom did he refer about this being a big thing?

A. It would be a big thing for us all—the family.

Q. If Mr. Robinson accomplished the sale?

120 A. Yes, sir; he has also said since we have been in the city he would do everything for us.

Cross-examination waived.

Plaintiff rests.

Mr. TAYLOR: Mr. Greene asks the privilege of correcting his testimony in one particular.

Mr. GREENE recalled: In making my statement I said I received $30,000 from Mr. Tucker and turned it over to Mr. Wilson. I made a mistake in that in this particular: I received $30,000 from him; $25,000 I turned over to Mr. Wilson, five thousand dollars of it I retained. That is the only correction I have to make.

W. J. WILSON sworn on behalf of defendant.

Examined in chief by Mr. PATTERSON:

Q. Tell the jury your negotiations with Messrs. Everett & Robinson about the sale of these cattle.

A. Along in 1883, about August, I think—I don't remember the dates exactly—some time in August, 1883, I received a letter from Everett and Robinson—probably Mr. Robinson and Mr. Everett jointly—in regard to a cattle sale (purchase made). They requested me to come on there. Well, prior to that I had received a letter from Mr. Robinson in which they requested me to come on there and make a contract for cattle—for this herd of cattle spoken of. When arriving there at Chicago they had a contract. First I went to them, and we drew up a contract—this contract we have
121 here; you have them there, Mr. Patterson—the first contract spoken of—I saw it yesterday.

Q. Tell any conversation that occurred in connection with them.

A. When I first approached these gentlemen in regard to this sale they wanted to know my price on the cattle, my price on the horses, my price on my land, and my range right, as we all claimed if we locate in a section of the country we have, as we term it, a moral right to the locality, and I was selling my right and title to that locality, and for that I asked them $50,000—for that and 3,000 acres of land and my fencing, etc. I had a great deal of fencing there. For my horses I asked them $50 a head; for my cattle I asked them $30 a head that was there for the time, and they wanted to get them as cheap as they could, and I being anxious to make a sale we—I gave a little—I got down where I thought the cattle were as cheap as I could possibly sell; I think it amounted to two hundred and thirty thousand dollars, the lowest figures I ever gave them. I would take $30 a head for the cattle, $50 a head for the horses, $50,000 for the ranch and my right there; that amounted to $240,000, but I think we cut it down to $230,000 and five thousand dollars as a commission and a horse. This was in 1883, when I was there—that is, Mr. Everett said if he came out to the ranch he was going to have a horse. I spoke of the fine qualities of my horses; he said he wanted one. I told him he could have one; that was my understanding in regard to the horses. We had a great deal to say about the transaction, and when we got through talking over it we drew up these papers. This was our clear understanding in regard to it—that first contract; then Mr. Everett drew up this second contract without my knowledge and showed it to me, and he explained that as being absolutely necessary in order to make his trade over there. He said it was necessary to
122 send a prospectus; wanted that sent to London as a prospectus. It was a manner of trading I didn't know anything about. I never had been interested in their trading. My trading had been done in only retail trading here for a number of years—retail trading. He insisted it was absolutely necessary. He insisted it did not cut any figure with me, good, bad, or indifferent. He said, Here is our contract calling for this much money. My understanding when I made this contract was it was to be cash in

my hand when the parties came over here; that was my understanding in 1883—that they were to come over and pay the cash, and I signed that. We corresponded more or less ever since, up to the time we made the contract, in December, 1884, and during my transactions with Mr. Everett and Mr. Robinson in Chicago I grew a little dissatisfied with Mr. Everett on account——

Q. I want to ask you further now with reference to these matters. What did Mr. Everett say to you was the purpose of putting the sum of $275,000 in the prospectus, as he called it, or the agreement that you wrote there, that you signed?

A. Well, that was for the parties in London. He spoke of the parties in London that were interested in this transaction, and he went on to enumerate the different ones—the Wilkes Bros. and Dr. Everett and others—and the gigantic expenses of floating it over there, and all of which, he said, was absolutely necessary—to put that amount—to put it where they could handle it, including their profits.

Q. What, if anything, did he say about when they were to receive the difference between the amount you were to get and the price that was put in the agreement—that is to say, the $50,000?

123 A. He said that was to come after I got my money. It was distinctly understood I was to have my money cash in hand when my papers were turned over, and at that trade or at that writing there was no other talk but a cash transaction; and in my transactions there with Mr. Everett I became dissatisfied with Mr. Everett from misunderstandings, as I thought, or mistakes, to put it as mildly as I can. I told Mr. Robinson I didn't want to deal at all. I didn't want to deal, and I expressed to his ladies at the house (I was visiting Mr. Robinson's house—made a call)—I expressed to the ladies at the house I didn't want to deal with their friend, Mr. Everett; I was afraid of him. Mr. Robinson tried to assure me Mr. Everett was a straight man. He went on to tell me how long he had known him; he belonged to the same church; he sat right near him in church for a number of years; told his good qualities; but I asked his pardon for so saying; I told him I was afraid of Everett.

Q. Come right to the conversations.

A. And we dropped it at that—no; that was not at this contract; that was at the other contract. I came home after the conversation I have just spoken of. I came home and would not sign the contract they are speaking of they had there for me to sign.

Q. Was this on your second visit to Chicago?

A. Yes, sir.

Q. Are you now referring to the time when that contract was brought over from London—the first contract?

A. Yes, sir.

Q. You refused to sign that?

A. Yes, sir; that is the contract I am referring to; the one they brought over I refused to sign; of course, I didn't commence at the beginning.

124 Q. Go ahead; detail what occurred about that.

A. Well, just to commence at the beginning of that contract,

when they sent for me to come down and sign that contract, they wrote me the contract was ready for me to come down and sign. I went down to Chicago. They had the contract. I went into the office where Mr. Everett and his son and Mr. Robinson were. They showed me the contract. I looked it over carefully, and I decided that I could not sign it that evening; didn't understand it; that was the reason I gave them for not signing it; told them it was too complicated; there was something in it I didn't understand; I didn't doubt but what it was all right, but I didn't understand it; therefore, that I could not sign it. Mr. Robinson offered to give me his bond it was all right. Mr. Everett offered to give me his bond that it was all right; still I did not sign the contract. I told them I would have to look it over to satisfy myself in regard to it before I signed it. I took the contract down to the hotel that evening, kept it there that evening, studied the contract the best I could, studied it the next day, and the second day I met Mr. Tankersley, from Leadville, an attorney with whom I was well acquainted. I drew his attention to it, and told him I wanted his time for a couple of hours, and I would give $20 for his services to look over the contract there, and I handed him the contract to look it over, and he was to report to me in the morning. At noon when I came to lunch, when we met there at lunch, he told me he could not report on it; he did not understand it; he wanted to meet me that afternoon and go over it with him in detail, and he would find out what was decided by the contract. We did so; we were at it probably four hours. Mr. Tankersley, after he got through with the contract, said then,

Wilson, I do not understand it; there is one thing that
125 I can advise you in regard to it positively, and that is not to sign that contract, for it has two distinct currents to me, an under current and an over current; therefore, my positive advice to you is not to sign it. I went back and told Mr. Everett and Mr. Robinson that was the conclusion I had come to. They wanted me to go and consult an attorney with regard to it. I told them I had done so, and they were positive he did not understand it, but I told them that I would depend upon his judgment in regard to it; that I would not sign the contract; and I left it at that time and came out home without examining it—without doing anything further in regard to it. Then I forget the next correspondence we had in regard to it. Some time afterward we had correspondence in regard to it. I don't remember now just exactly what it was. I believe the letters are there, are they not—the correspondence we had afterwards?

Mr. PATTERSON: I don't know.

A. At any rate any correspondence I have had——

Q. There is a letter here between the time you left Chicago and Mr. Everett coming to Denver in December.

A. Well, I have it all there, for I have saved or tried to save everything in regard to it. The next step was that Mr. Everett came out to Denver to fix up a trade with me; that was the understanding, I believe. He came out here, and as he said—we went to Mr. Neville Hughes—to his office—and he insisted on the good qualities of that

contract that was sent over from London. He showed it to Mr. Hughes, and assured Mr. Hughes that it was all right. Mr. Hughes advised me to sign it—Mr. J. N. Hughes—Neville Hughes, but still I didn't sign it. I told him that I was afraid to sign it. I
126 listened to Mr. Everett's arguments; told him I would not sign it; there was no use talking about it; there was too much in it I didn't understand, as I considered it. I repeated the counsel that I had had on it and his version of it, and stood firm on that. I told him I was anxious to sell my herd. He had said that I didn't mean to make a sale when I wrote on to them. I told them I wanted to sell my herd; meant to trade; it was not to mislead them that I wrote to them my herd was for sale. Mr. Everett insisted he was doubtful if I wanted to sell my herd at all. I told him I would sell if I got a contract that would suit me—a contract that was reasonable, one I could understand. We proceeded then. He said he would draw up anything that was just and fair. I told him very well. We proceeded, then, to Mr. Patterson's office to have Mr. Patterson look it over and draw up a contract. We didn't go into the details of the old contract; wanted a new contract. Mr. Everett and Mr. Patterson went to work drawing up a new contract; worked on that several days, but before starting into that new contract I told Mr. Everett that, as I said before, *that* I had lost confidence, or wasn't very anxious to enter into papers, any articles of agreement, with him. I told Mr. Patterson if I entered into any agreement at all I wanted to be strictly on my guard, for I didn't know what the result might be; didn't know what the object was; I could not understand it, and as Mr. Patterson will bear me out—remember my saying, I am satisfied—and we proceeded then to draw up a contract. Before drawing up this contract for the cattle, setting aside all prior contracts, I didn't know what bearing it might have, trying to get a power of attorney from me. This one was drawn up for $275.000; sent over to London. I did not want that to figure in it. I didn't know what bearing that would have upon me, and I wanted all this set
127 aside and commence anew with the contract, but before I would enter into this contract with Mr. Everett I told him he would have to be responsible for any attorneys' fees that we might contract while drawing this paper; that I had been down to Chicago to see them in regard to this business, and it had not proved satisfactory to me so far, and I did not like to go to one nickel's expense further; and Mr. Everett then entered into a contract with me to pay the attorneys' fees for drawing the papers, providing the company did not buy the cattle. We drew up that contract that you gentlemen have seen here, and we provided in that for the commission of $5,000. There was no other amount for commissions spoken of to me at any time or any place, with the exception of when we drew this first contract. I forgot to state that when we drew this first contract Mr. Everett and Mr. Robinson were both satisfied that these parties would take the cattle as soon as they came over. It was the best bargain they had had. It was so much better than the Reynolds place that was proposed over there that they were satisfied they could put it there, and they said to me they

wanted to know what it would be worth to me to have the cattle received range delivery. We made our calculations there jointly, and I decided it would be worth $10,000 to me to have them received range delivery, and I told them that if they would have them received range delivery I would give Robinson ten thousand dollars, and went on to show the expense it would be to deliver the cattle and horses—gather them.

Q. (Paper shown to witness.) Look at that letter and state whose letter that is.

A. It is from Mr. Robinson.

128 Q. Is that a letter you received before you went on to Chicago in August, 1883, from Mr. Robinson to negotiate about this sale?

A. Yes, sir; I did. That is the letter he wrote to me inviting me to come on.

EXHIBIT T.

J. M. Robinson & Co., live-stock commission merchants, No. 25 Exchange building, Union Stock-Yards.

CHICAGO, *August 3d*, 1883.

DEAR WILSON: I am to have an interview this p. m. with a party just from Europe that wants to buy a herd. I have three or 4 for sale, but will give you the preference. In your favor of June the 26th, describing the range, cattle, &c., you omitted to state the number of acres of land that you have a Government title to. Won't you please do so? Give the number of cattle as near as possible, with and without calves, and with calves you expect to brand this summer; then give your lowest figures or thereabouts for the entire outfit and payments. You must state what commission you will give to sell it for you. There are several persons interested in this sale both here and in Europe; therefore it would cut the amount down. State how many Texas you have in the herd and all other particulars, and answer by return mail, as we want to telegraph the party — Europe immediately. They have $200,000.00 in ready money to put into a herd. Don't fail to answer at once, as that will be the first herd I will put them onto; wrote you that we started the bulls all right night before last—hope they will go through all right—with the exception of two. They are a splendid lot, and I hope you will be pleased with them.

Yours truly, J. M. ROBINSON.

Q. It was on the strength of that letter you started to Chicago?

A. Yes, sir.

Q. You say that they represented—that these people represented—these people had money to pay cash?

129 A. Yes, sir; there was no other conversation but a cash trade the first transaction, and when they got the party to receive the cattle range delivery I was to receive my cash in hand when the papers were turned over.

Exhibit T, being letter dated August 3d, 1883, offered.

Q. (Paper shown). Whose letter is that?
A. Mr. Robinson's letter, dated —.

EXHIBIT U.

CHICAGO, *Oct. 2d*, 1883.

DEAR WILSON: We are just in receipt of a cablegram from London asking whether (in the event a trade is made) you will take sixty thousand down, balance in one and two years, & in the meantime accept three-fourths of the proceeds of the shares of company's stock sold & also three-fourths of the proceeds of the sale of the beef cattle. The company wishes to keep one-fourth in order to give value to the shares and enable it to sell them more readily. The probabilities are they can dispose of enough stock in the next six months to pay you in full. You see this gives you the $60,000.00, & if you sell $50,000.00 of cattle this fall ¾ths of that you will get in addition, making the am't paid you $97,500. This is all the security you will want, & in addition they will be selling shares of stock right along & forwarding the proceeds to apply on the balance due you.

Now, Wilson, it is no small matter to work up a sale of this kind, particularly at the present time, as there are various ranches offered us to sell at lower prices & better commissions; but I started in with the full determination to stand by you and I am going to do it, & if we don't sell your ranch it shan't be our fault.

It is understood that you are to have a mortgage on the entire stock of cattle, horses, ranch, etc., etc., to secure you on the back payments, and that nothing shall be sold off of it without your consent until paid for in full.

We think you had better come here as soon as you receive this & wire us to that effect. If you can't come wire us whether you can accept this proposition, and we will cable them at once & they will send their man to investigate; cattle market steady. Don't lose a moment's time on the ranch matter, for if we can't sell yours we want to sell them another that we have not told them anything about, and it is very important that we should get them here before it gets too cold.

Hoping you and family are well, I am, yours truly,
(Signed) J. M. ROBINSON.

Endorsed: Robinson's letter, Oct. 2nd, 1883.

130 Q. Was it on that letter or on account of that you went to Chicago the 2nd time? This is dated Oct. 2nd.
A. I don't remember going to Chicago on that letter.

Letter is marked Exhibit U.

Q. You did go to Chicago in October some time after they got the English contract. When was it you saw Tankersley and refused to sign the English contract?

A. That is what I was trying to think; I can't call that to memory now; I can't remember whether that was in August or October; (refers to mem.); in October.

Q. (Paper shown.) Whose letter is that?

A. That is Everett's—William S. Everett's—dated September 28th, 1883.

EXHIBIT V.

CHICAGO, *Sep.* 28*th*, 1883.

William J. Wilson, Esq.

DEAR SIR: I have received two letters from London and one cable dispatch, in all of which they give positive assurance of making a speedy sale of your ranch. Two parties seem pleased with it, and are getting together their respective friends to take it. It seems that the month of September is the hunting season in England, and most of the people who are able to buy your property are enjoying the season in hunting. However, they say that the parties interested are pushing things vigorously, and they have no doubt of a sale within a short time; it of course will take a little time to get the money ready after they inspect and are satisfied with the property. I cabled the number of acres freehold. They are much pleased with the report.

Respectfully yours, WILLIAM S. EVERETT.

Letter marked Exhibit V.

Q. Do you know of any other letters than those I have called your attention to?

131 A. I do not, Mr. Patterson. All letters I ever received you have right there—every one I know of—every letter or paper I ever received from them, good, bad, or indifferent.

Q. You have testified about this contract of December 15th, in which the matter of the commission is mentioned?

A. Yes, sir.

Q. Now, this is the contract given by you to Everett & Robinson? You know that?

A. Yes, sir.

Q. Did that contract interfere with this, if you recollect?

Objection on the ground that it is a question of law.

The COURT: Mr. Everett testified about that—that is, as to the understanding; that is what I understand him to ask about, for of course he cannot ask for a legal conclusion.

A. My object in this was to set aside that contract there that I sent to London. That is what I was afraid of, and I was not positive whether I had given him a power of attorney or not. I was frightful I had. You remember once I told you here I wanted to guard against it—wanted the article strong enough to prevent any of those from having a purchase on me. That article was the article I feared. I offered to do that; was always ready and willing.

Q. It wasn't understood that this was abrogated at all?

A. No, sir; it was not.

Q. This contract had reference to the one that was sent to England and any power of attorney?

A. That other and the power of attorney, if any, was the article I was afraid of, and I spoke of the agreement, of all papers and contracts that had been drawn, so as to cover everything that had been drawn, and drew a new one on the same basis as that.

132 Q. You were not clear how many papers you had signed?

A. Indeed I was not. I had an idea as to about how many I had signed. I wanted to head them all off—every one of them.

Q. The result of your negotiations with Everett in December was that this contract that was printed was agreed upon?

A. Yes, sir.

Q. Now state, Mr. Wilson, whether or not there was any agreement at that time, in December, 1883, on the subject of compensation or commissions outside of this one that you signed abrogating the other contracts. Did you have any verbal agreements of any sort or character?

A. There never was one word before the trade was made. Mr. Everett or Mr. Robinson never spoke to me about commissions until after the trade was made; then they approached me for commissions, approached me for an obligation in regard to commissions.

Q. Mr. Everett has testified about a visit made by you to Chicago some time in February, 1884, and the conversation between you and him and Robinson and his son in his office. Tell the jury what you know about that in February, 1884, after the contract of December was sent to Europe, before the new papers came out?

A. I don't remember any conversation there when I returned there from Washington in 1884. I have a faint recollection of going up into Mr. Everett's office. My recollection is that I met Mr. Everett, Jr., and he told me his father was away. As for business, I don't remember any business transaction, not even a business conversation.

Q. I ask you whether or not on that visit in February, 1884, they showed you this original agreement upon your part to sell for $230,000 less $5,000, with this indorsement upon the back of it, and asked you to sign it? (Hands paper to witness.)

133 A. I know the article, Mr. Patterson, well; it is not necessary to read it all. I am positive in my mind they did not show me this when I was there in February. I am satisfied in my mind they did not show me any other paper—that is my recollection. My recollection is that Mr. Everett, Jr., is the only man that I met in the office; I am not positive in regard to that, but I think he was the only man I met in the office.

Q. Here is a copy of that contract and that indorsement that was sent to you. State whether or not you ever saw that purported ratification until you received that from them with a request to sign it.

A. I will say I never did until I received it with the letter, and I refused to sign it.

Q. State whether or not upon your visit to Chicago in February,

1884, or at any other time, you said to Mr. Everett and Mr. Robinson or to either of them that if they would come to Denver and help to put the trade through you would give them ten thousand dollars additional. Furthermore, the question never came up between us, good, bad, or indifferent. State to the jury in what connection, if any, the sum of ten thousand dollars was ever raised between you.

A. It was raised in Chicago when we made this first trade in regard to range delivery. They spoke of having the parties receive the cattle. We debated that subject some time. It was common in delivering cattle; it had been done by a great many. The cattle were received range delivery, and it was very profitable, as the cattle men all know, and I said to these men that I doubted very much if they could get the parties to receive the cattle range delivery, for people who had that much money to invest were careful about
134 investing, and would not buy something without seeing it, but Mr. Everett insisted that he would have the parties receive the cattle range delivery, repeated it a great many times in my presence, and I told him if he did I would allow him ten thousand dollars for having them receive the cattle range delivery; that was the only connection I ever heard of any other commission in any way.

Q. The parties, Messrs. Dickie & Wilkes, representing the English company, came out, I believe, some time in February?

A. Yes, sir.

Q. State whether or not they accepted the contract as you had executed it and sent it to England or was it materially modified?

A. It was materially modified. We worked at it probably three weeks modifying it.

Q. Before they purchased did these men go down upon the ranch and examine the cattle and the lands and everything of that character?

A. They did; they were there for some time.

Q. Tell the jury when it was for the first time that either Mr. Everett or Mr. Robinson claimed or suggested that you were obligated to pay them the difference between $225,000 and $275,000 until after you had received your money. When did they first present any such a claim as that to you?

A. I said I never heard of that until after the contract was signed. I believe they spoke of that before it was—just about the time it was signed.

Q. State what occurred.

A. Probably the day it was signed—not to exceed one day before it was signed—I refused positively to do it, and they spoke to Mr. Wilkes about it. Mr. Everett, I think, spoke to Mr. Wilkes about it.

135 Q. State what they said; the conversation between you, Everett, and Robinson.

A. They wanted me to go into an article of agreement showing this surplus; there was surplus in the contract when the contract was drawn. They wanted me to go into an article of agreement showing this surplus. I told them I could not do that; when this

contract was drawn, the one we signed, living up to, I said to every one there there was a surplus in the contract to which I had no claim at all, and it was that surplus Mr. Everett wanted me to go into a contract with him in regard to, obligating myself to pay this surplus when the contract was completed. I told him I would not enter into writings in regard to it. I says, I will admit there is a surplus, as I have said all the way through, as a dozen can bear me out in; there was a surplus in the contract. I did not know where it belonged. I asked Mr. Everett where that surplus belonged. He told us all it belonged to people in London—the floaters, as he called them—and the men that were handling it over there and the Wilkes Bros.

Q. That is what he told you about this surplus; the difference between $225,000 and $275,000?

A. Yes, sir; the surplus. I said I did not claim that. We didn't enter into any contract about that. I told him I would not do it under any consideration. We stood on that. They got mad, hot, and were going to break up the contract. I don't know whether they threatened Wilkes or not. They threatened. I told them all right, do it. It was something I didn't understand and would not give any individual obligation in regard to it. After the contract was signed and I received my money Mr. Robinson came to me and Mr. Everett.

136 They said, Mr. Wilson, here is money you don't claim. We put this money in the contract; we put this profit in there, and you don't claim this money, you say. Why can't you let us have it? I told him I was willing to let him have it after I got my money. I wanted it first. He wanted me to draw up a contract to that effect. I sat down and drew a contract to that effect showing our understanding clearly. I drew it at the St. James Hotel, setting forth just exactly our understanding. I was to have my money first, pay him his commission, and then if there was any surplus after I got my money I was to give it to them. When Mr. Robinson and Mr. Everett looked at that Mr. Everett got angry at it. I forget now whether I signed that contract or not. We were all dictating it. Mr. Everett drew one in the first place and it didn't suit me. I drew one modifying his. I put in my ideas instead of his. We looked them both over; anyhow, I submitted it to him. He did not return it. He has that contract now, for Mr. Wells had it in his possession. I am satisfied Mr. Wells told me he had it in his possession—Mr. Wells, of Wells, Smith & Macon.

Q. Now McNeal & Taylor?

A. Beg your pardon.

Q. There is a note dated March 4th, 1884. Who is that from?

A. That is from Mr. J. M. Robinson. I would state further in regard to that surplus that is in the contract; I stated to different people; I stated to Charles Hughes. I would say this statement was made when the contract was drawn—when we were working on it. It was stated in the presence of Mr. Everett and Mr. Robinson, too. I said that there was a surplus in the contract, and I told the attorneys that they could have it—Mr. Hughes and Mr. Patterson. I

said here is money I don't want; don't belong to me, I said to both of these gentlemen.

137 Counsel read the following letter to the jury:

EXHIBIT W.

ST. JAMES HOTEL, DENVER, COLO., *M'ch 4th*, 1884.

DEAR WILSON: I waited in the reading-room all afternoon to see you and bring our matters to a final determination. As I am compelled to go home to-night I shall take it as a personal favor if you will call on the law firm of Makon, Wells & Smith — you can, and put the thing on a basis that will avoid much trouble. We have put our claim much below what Everet asks for, and I hope you will take steps to arrange it at your earliest convenience. I am sorry I did not see you, as I could wait no longer.

Yours truly, J. M. ROBINSON.

A. I could state further, in regard to that, what I done in regard to commissions—the stand I took at the time—if you want to hear it.

Q. That was to Mr. Everett or Robinson?

A. Yes, sir; when I drew this article of agreement that I submitted to Mr. Everett, and he kept it without returning it to me, telling me whether he would accept it or not, I there, probably not at that moment, but at that day, tender*ing* Mr. Robinson $5,000 in money, as a commission, and then drew this article, stating our understanding or my understanding of the remainder, showing that I had no claim to it—showing that this surplus money, if it come to me, I would turn it over to Robinson and Everett. I told Mr. Robinson I didn't want to put them out of a cent; it was not my object; and, if this money came to me, I would surely turn it over to them; and if they will produce the article it will read that way—to that effect; it is lengthy; it is part of their own proposition and part of mine.

138 Q. State to the jury how much money you advanced to the New United States Cattle Ranch Company for the running of their ranch until the foreclosure of the mortgage. Just give us the sum in gross.

A. It is something just about $16,000.

Q. You have vouchers to show for them all?

A. Vouchers to show for every nickel, and receipts.

Q. Can you, in round figures, tell the jury how much you received upon this sale to the New United States Cattle Ranch Company from all sources?

A. I think it is one hundred and ninety-two thousand dollars.

Q. That includes all payments, the price received for cattle, all money that you have ever received on account of the New United States Cattle Ranch Company from all sources—one hundred and ninety-two thousand dollars?

A. Yes, sir; that is my recollection, $192,000; my books will show to a nickel, but that I am satisfied is the amount, $192,000.

Q. That includes the notes that you received for the sale of the cattle at the mortgage sale?

A. Yes, sir; I gave the company credit for the notes as cash as I received them.

Q. Whether the notes were ever paid or not?

A. Yes, sir.

Cross-examination of W. J. WILSON by Mr. MCNEAL:

Q. Do you remember to have executed these two papers dated the 17th of August, 1883, in Chicago, on the same day, about the same time?

A. The small one was executed, probably, about two hours before the other.

139 Q. Were they all part of the same transaction?

A. Yes, sir.

Q. In one paper you say you are willing to sell your ranch for $230,000 to Robinson & Everett, less a commission of $5,000?

A. Yes, sir.

Q. About two hours afterwards you executed a similar paper agreeing to sell the same property to other parties in England for $275,000?

A. Yes, sir; I am ashamed to say I was guilty of that—by his inducing me.

Q. What was your understanding and what was the talk at the time between you and Mr. Robinson and Mr. Everett as to why you executed these two papers in this way for these two different sums?

A. I had this understanding with Mr. Robinson here; this was our trade. Then Mr. Robinson and Everett—Mr. Everett was spokesman—said to me—they got this up; I didn't dictate one word of that other. They got that up as a prospectus or contract to send to London. I was quite a while before I signed that; didn't want to sign it. I didn't know——

Q. I asked you what was the understanding or talk between you as to why that paper was signed?

A. I was trying to explain.

Q. I don't want any explanations. If you will answer my questions I will be just as well satisfied.

A. Pardon me; the question again.

Q. The question was what conversation occurred between you, Robinson, and Everett as to the reason why this paper was printed and signed. What was said by them or you?

140 A. It was for the purpose of sending it over there as a prospectus or a contract with people there; they said that was their business and not my business.

Q. Did you understand that when you signed this paper that you thereby sold your ranch to Everett & Robinson?

A. That was my contract with them.

Q. Did you understand and mean you had thereby sold your ranch to Everett & Robinson?

A. It was conditional—a conditional sale.

Q. Did you understand when you executed this paper Robinson & Everett were to be the purchasers of the ranch?

A. Yes, sir; that was their platform right along all the time—that is, at that time when that was made they was doing the buying; they was going to transfer to these third parties and make this——

Q. You do remember that at the same time you executed another paper which is in positive terms an agreement to sell to these English parties for $275,000?

A. Yes, sir.

Q. How did you intend or suppose you could keep this agreement?

A. I was very much ashamed to sign it, but Mr. Everett insisted that that was for them to send across the water as a prospectus, and on that ground I signed it.

Q. You could not tell whether this paper then was a prospectus?

A. I insisted; didn't want to sign that; I was finally induced to sign it so as to assist them in making the trade.

Q. Was there anything said when you first talked to them about commissions; anything said about the amount?

A. They asked the question.

141 Q. You went to them to get them to sell your ranch for you, did you?

A. Yes, sir.

Q. That was your object in going to Chicago?

A. Yes, sir.

Q. Mr. Robinson's letter invited you to come there—you wanted him to sell the ranch for you on commission?

A. Yes, sir; that was it.

Q. When you went there what was said about a commission for the sale of your ranch—anything?

A. Yes, sir; there was.

Q. What was it?

A. Well, it was $5,000.

Q. Did they offer to sell your ranch for a commission of $5,000?

A. $5,000.

Q. Who made that offer?

A. Well, Mr. Everett and Mr. Robinson repeated it I don't know how often.

Q. Made the offer to sell your ranch for this amount to these English parties. You didn't have any idea that they were negotiating with anybody but the English parties?

A. No.

Q. They offered you to negotiate the sale of this large property in England on a commission of $5,000 and did not get any option?

A. They showed the necessity of trying to get more.

Q. They did say $5,000 was no commission at all for that kind of a transaction?

A. Pardon.

Q. What did they say; tell me what they said about commissions?

142 A. Well, they asked me $5,000.

Q. Yet insisted they ought to have more?

A. Yes; they wanted me to put the commission higher than $5,000. I told them I could not do it; I was putting my cattle lower then than ever I had asked, and could not put the commission one dollar higher. They were dissatisfied. Well, gentlemen, you have got my bottom figure. I said, Mr. Robinson, "You know enough about my dealing to know it is not necessary for us to change words; you have got my bottom price; I can't spare more than five thousand dollars out of this amount of money I receive; therefore $5,000 is all the money I pay."

Q. You testified, as I understood you, that there was nothing said by either Robinson or Wilson that the difference between this $225,000 expressed in one contract and the $275,000 expressed in the other contract was to compensate them for making this sale?

A. They insisted that was for themselves and the men in London.

Q. They insisted that was for themselves and the men in London?

A. Yes, sir.

Q. So you did understand they insisted on this surplus?

A. That was not coming to me.

Q. That was put in the second contract for their benefit, was it?

A. That was my understanding; for their benefit and the parties in London.

Q. They were to have some of it, as you understood?

A. Yes, sir; as a matter of course.

Q. You did not deal with anybody else than with them?

A. No.

Q. It was for their benefit; as to what they might make out of somebody else did not concern you at all?

143 A. No; Mr. Everett never said to me just what it was for, but he told me about the different parties interested in the transaction; spoke of Wilkes Bros.; spoke of Dr. Everett, and different ones, and he spoke of this $5,000 as a commission money to keep up expenses—keeping office—on their part, paying all the expenses of the transaction.

Q. Did you understand that the difference between $225,000 and the $275,000, if it was obtained, was to go primarily to Everett and Robinson—didn't you?

A. Well, Mr. Everett told me, in words, that there was a great many middle men on the other side of the water.

Q. You didn't undertake to pay any middle men in London?

A. I know, but Mr. Everett——

Q. Didn't you understand that this money was to go primarily into the hands of Everett and Robinson at the time you signed these papers?

A. Oh, yes.

Q. This second contract you understood was to be sent to London for the purpose of being a basis for the sale of the cattle to this company?

A. Yes, sir.

Q. Had you seen them in the interval between the time they came out to close the transaction? Had you seen them in the interval?

A. I don't know — I did. I think I was in Chicago in February. I had business in Washington and came back through Chicago. I have a faint recollection of going up into Mr. Everett's office and seeing the young gentleman there, but do not have any recollection at all of coming in contact with any papers or business of any kind with Mr. Robinson or Everett or Everett, Jr.

Q. You will not pretend to say that either going through Chicago or coming back through Chicago from Washington you did not stop in Chicago and have an interview with Robinson & Everett as to the matter?

A. I don't know; I am not positive; I am not sure, but my understanding was the young gentleman told me his father was away.

Q. I understand you say you will not be positive you didn't have an interview there at that time?

A. No, sir.

Q. If you can't remember the interview itself or the fact that you had an interview it is not likely you can remember the details, is it?

A. No, sir.

Q. You do not remember any paper presented to you to be signed?

A. No, sir; I do not.

148 Q. You will not swear there wasn't?

A. O, yes; I will swear there wasn't any paper presented to me—that is, pertaining to this trade.

Q. Will you swear you did not have a conversation about this transaction?

A. Well, now, I would not like to do that, for if I met either of them I would be very likely to remember it, but don't.

Q. Whether you had an interview with them or not, you very soon afterwards returned to Denver?

A. Yes, sir.

Q. How long after you returned to Denver was it you received this proposed contract for you to sign this paper marked "E," with the addition at the bottom, an affirmance of the contract as to the $50,000?

A. Well, now, I could not say exactly as to the date of that; it was some short time before the parties came out here—that is, Mr. Dickey and Mr. Wilkes and Mr. Robinson—a short time before they arrived; I could not say; a week or ten days.

Q. Did you at any time receive a telegram telling you you must sign this and send it back before they would come?

A. Yes, sir; Mr. Patterson answered it.

Q. Mr. Patterson's letter answered it, didn't it?

A. Yes, sir; I received it, I testified, and I received that communication as well.

Q. You received that communication in a letter?

A. Yes, sir.

Q. Have you got it?

A. I think it is there.

Mr. PATTERSON: I have no such letter, Mr. Wilson.

149 Mr. WILSON: The same date as that.

Mr. MCNEAL: The letter the contract was enclosed in.

Mr. PATTERSON: Every letter Mr. Wilson has given me from Mr. Everett or Mr. Robinson is now in that.

Mr. WILSON: Is there not a letter there showing the enclosure of that?

Mr. PATTERSON: No, sir.

Mr. WILSON: If it is not there I am sure I have not got it.

Q. You received one?

A. I would judge so from the way that reads; that is my opinion.

Q. It is not likely Mr. Everett would send——

A. No, sir; to my knowledge I have not a letter that is not in that box concerning this business; I have not had one.

Q. The only answer that was ever sent to the telegram that was sent to you urging you to sign this paper before they came and to the letter accompanying this paper was the letter Mr. Patterson wrote at your request, already in evidence; that is the only answer that was ever sent?

A. Yes, sir. When I showed them to Mr. Patterson I told him that he should answer it, and he answered it.

Q. And the only ground of your objection at that time, February 2nd, 1884, was that you was afraid there was technical objection to it—something in it that you could not understand?

A. That is the second contract.

Q. I will read it, so we will be certain.

A. Are you alluding to the first contract?

Q. I will read what was proposed to have you sign by this letter of Mr. Everett: "I hereby affirm and ratify, and I further

150 agree the sum of $50,000 is no part of the purchase price due me, and shall be paid in commissions as and when." That was the contract. The objection you had to signing that you say was you was afraid there was a technicality in it?

A. Yes, sir; and something that didn't concern me.

Q. Something that might involve you and something you did not understand?

A. It didn't concern me one way or the other; as I understood it, time and time again, it didn't concern me; I had no deal with them in regard to that; would not.

Q. You admitted all the time the $50,000—you were not entitled to that $50,000?

A. Yes, sir—that is, in 1883, when we talked about this transaction.

Q. Yes, sir; in the beginning, I understand that?

A. Yes, sir; I gave them my figures.

Q. There was never any change in the understanding the $50,000 was a sum you wasn't entitled to?

A. Yes, sir; they done that under their own speculation.

Q. Do you understand why it is that Mr. Robinson and Mr.

Everett both came out to Denver to assist in closing this sale up after the English parties came, if you never had any talk with them in Chicago?

A. I do not.

Q. You haven't any idea?

A. Unless it was to push this through. They were very anxious to establish themselves as live-stock commission merchants—that is, with the people abroad; they insisted upon that. As Mr.
151 Everett said, You realize $5,000 is no commission. We want to establish ourselves. We have represented cattle here for Mr. Reynolds; that fell through. Now, we have got a herd of cattle we can depend on; we want to show that we mean business; that we can make a trade. They were anxious to put this on.

Q. So far as you were concerned in their coming out here, it wasn't at your request?

A. It was not.

Q. You didn't care to have them come?

A. I don't think I was concerned one way or the other. I don't remember whether I was. I know there was no transaction between us in regard to it.

Q. You are quite certain that when you came through Chicago there was no talk, so far as you know, about their coming to Denver in the latter part of February; Everett and these English parties came on their own motion?

A. I am sure there was no understanding, no trade, in regard to their coming. There might have been casual conversation in regard to their coming; if there was I don't remember it.

Q. You do not remember meeting either Everett or Robinson, excepting the young man?

A. No, sir; just meeting the young man in the office. There was no contract in regard to me employing him to come to Denver.

Q. You say the only talk there ever was about anything in addition to this five thousand dollars—this ten thousand dollars—was when you first entered into this first contract, on the 17th of August, 1883?

A. Yes, sir; that was the time.

Q. And that was to get the English parties to accept these
152 cattle without counting them?

A. Without counting them.

Q. That matter discussed—you say it was discussed on the suggestion of Everett or Robinson; that they could render services very valuable; that they could get the English parties to accept the cattle without coming—range delivery?

A. Yes, sir.

Q. At that time you had no agreement at all with the English parties?

A. No, sir.

Q. Was it certain you ever would have any agreement if Mr. Everett and Mr. Robinson should become the purchasers of these cattle under this first contract there would have been no occasion for that kind of talk?

A. No, sir; probably not.

Q. At that time you had arranged no details with the English company whatever?

A. Didn't know them at that time.

Q. You think when the matter was discussed as to the ten thousand dollars additional commission the consideration of that was they should come out here and induce the English parties to accept these cattle on range delivery without counting them?

A. Mr. Everett said they were anxious to float the stock just as quick as possible. He said it would be to their advantage to receive these cattle in that way—range delivery; they wanted to get this business closed; he says, I will have no trouble in doing it.

Q. Both of them came out when the contract was closed up?

A. Yes, sir.

Q. Was there any attempt on the part of either of these
153 parties, so far as you know, to accept these cattle range delivery?

A. I don't know, sir.

Q. You entered into a contract which dispensed with the whole matter, dealing with them——

A. The contract, as I told you in Chicago, provided for an actual count.

Q. They were insisting to get from you range delivery, you insisting that no man would accept them, yet you were willing?

A. I told them men that handled that much money were well enough posted not to receive them without being counted—not to receive something they had never seen—and from the contract as framed it shows positively each animal had to be counted separately.

Q. Now, you say the amount that you have received on this contract that you executed with the English people—there were, I believe, a good many modifications or some modifications in this contract executed by you and sent to England afterwards when you sold here?

A. Yes, sir.

Q. Those were principally at your request, for your benefit?

A. No; I think there was——

Q. Did you not propose—did you not commence—the matter of changes?

A. Well, there was a legal point that started it. The fact of my receiving three-fourths of the money for the cattle sold out of this herd and the other fourth remaining in the company to pay expenses would make the papers illegal, and in order to modify that Mr. Patterson told me my papers would not be legal if signed in that manner. In order to modify that they decided—Mr. Hughes, as Wilkes' attorney, decided the same way—it was not legal, and
we changed it. There were several other modifications for
154 the other parties and for myself. Now, in order to get that modification made, they made me provide for lending this company money to defray expenses for two years without interest. I had to do that in order to make that modification.

Q. When you asked for modifications they wanted some compensation for it themselves?

A. The understanding was I was to have this modification, but then they were to have a modification providing for my lending the company to pay expenses for two years, without interest; and they also provided that in case this property was not paid for according to contract and sold out under sheriff's sale that this sixteen thousand dollars, or whatever expense might be, was not to be collected from the parties. They put that in there, that modification.

Q. That was the understanding, if you on that mortgage foreclosed and should take the property this money you advanced should be advanced on your own account and not on their contract?

A. Yes, sir; I had to lose it all myself.

Q. As I understand, the negotiations finally resulted in a contract satisfactory to you?

A. Yes, sir.

Q. After that contract had been executed I understand all the original papers were put in escrow, to be delivered when it was completed, and they were still in escrow.

A. Yes, sir; the bankers told me I might take them if I wanted; I told them it did not matter with me; I would just as lief have them there.

Q. The money you received from all sources, as I understand, is $192,000?

A. Yes, sir.

155 Q. Will you give me the item of that?

A. Well, sir, I don't know that I could, exactly.

Q. Let me assist if I can?

A. Yes. The first payment was about $48,000—something like that; another one about $13,000.

Q. Before the papers were executed—that is, before the papers were exchanged?

A. Yes, sir; and another one for $13,850, six per cent. The Wilkes Brothers took it out. The amount of $50,000 was paid; the sum of $192,000—two sums—were paid, one at two months after, after they had realized some money from selling cattle Mr. Wilkes sold out of the herd. I got the money for it.

Q. What did that amount to—$22,380?

A. I would testify that is correct if you have that statement.

Q. It is in your advertisement.

A. Well, that was carefully looked over.

Q. What did you sell when you went out to sell under your mortgage?

A. We sold all the stock on the range and all the personal property.

Q. What did you get for the cattle—you sold to different parties, as I understand?

A. Yes, sir.

Q. What did you get from different parties?

A. We got for one herd thirty-one dollars and a trifle a head; that was 250 head of beef steers; that was thirty-one dollars and a

fraction; I hardly know what the fraction was; that is my recollection of it. We sold another bunch, a second lot, of two
156 hundred and fifty, for, I think, about thirty dollars.

Q. Don't you know?

A. I could not say without referring to our statement of it there; it is about——

Q. Have you made up this one hundred and ninety-two thousand dollars from the items constituting all these?

A. They are all right there; we have a report of the transaction; the report is right there; I will just turn that in; in regard to the steers it is just about that amount.

Q. $31.80 per head—$7,150 from Yetzer, and from Mr. Gebhart's steers $7,812.50; Alfred Butters' lot beef steers, 59 head, 20, $1,180; you recognize these figures as correct, do you?

A. Yes, sir; I do.

Q. Then, from Mr. Green for stock bought by himself, $82,333.90; from Mr. Edwin Wilson for personal property bought by him, wire fence, etc., $2,077. The total amounts of credits you have here is $182,468.75?

A. I probably was mistaken in regard to that.

Q. The sale to Green, did that include anything but horses and cattle?

A. It included horses and cattle, and, I think, he bought some other things.

Q. Why — you not that itemized as you have the other? He has everything itemized as he bought; everything that he bought is itemized.

Mr. PATTERSON: There are twelve items, making a total of $182,468.75.

A. What each man bought was noted right there by two or three different parties.

157 Q. The real estate you have not done anything with. You are still in possession of the ranch, and have been ever since this sale—in possession and use of the ranch?

A. I have sold 160 acres of it.

Q. What did you realize from that?

A. I think it was sixteen hundred dollars.

Q. The balance you are still in possession of and using?

A. Yes, sir; one hundred and sixty acres of land with the house and improvements. I am in possession of everything else, but not using it at all; it is a dead letter in my hands.

Q. Are you running the ranch or doing anything with it?

A. No, sir; not doing anything with it—not at all.

Q. How do you keep it in possession?

A. Well, by paying taxes on it.

Q. You are not otherwise in possession?

A. No, sir; I am not; well, I have a herd of sheep there, too.

Q. As I understand you have taken no steps to foreclose the mortgage on that?

A. No, sir; I have not.

Q. Now, as I understand it, you never claimed of this $275,000 you would be entitled under any circumstances to anything more than $225,000?

A. Two hundred and thirty thousand dollars, less five thousand dollars.

Q. You say that at that time Mr. Robinson——

A. Two hundred and thirty thousand, I believe, is the way the contract reads, is it not?

Q. That is all you ever claimed or pretended you were entitled to?

158 A. When I drew the contract I surely meant just that; when we drew up the other trade, when we came here the next year, in 1884, and drew up another trade, we based it differently.

Q. In what respect was it different?

A. Well, it based firmly on thirty dollars a head for the cattle and fifty dollars a head for the horses, and the fifty thousand dollars we took that as our basis when we first started in to modify this contract that Mr. Everett followed me out here with.

Q. Was there any agreement between you and Mr. Everett and Mr. Robinson that the contract should be changed to that extent?

A. No; but when Mr. Everett came out here with that contract, after talking to me probably three or four or five days before I would consent to come in; when I did sign it we would get an attorney; we would frame a contract on that basis, so as I could understand it; I told him that I would frame a contract on that basis——

Q. One moment. I have understood you to say there was no change whatever in the price you were to get for the ranch in the second contract that was drawn here by the contract drawn by Mr. Patterson, drawn and sent over to England, you did not sign; the contract price, some four hundred and ten thousand dollars? Was there anything to change that in any respect?

A. We didn't do that.

Q. In your mind you estimated your cattle at so much a head, your horses at so much a head, your ranch at so much?

A. Yes, sir.

Q. Or was that simply something you did in your own mind only that did not affect Mr. Robinson?

A. No; that was the clear understanding. Mr. Everett stated he had not put this $30 a head in the contract; he said he wanted

159 to float this; he could not put that in the contract.

Q. Do you mean to testify that when Robinson and Everett were out here, in December, 1883, when this contract was drawn here by you and finally signed and sent to England, it was then agreed between you and Everett that instead of your receiving $275,000 you were to receive some larger sum?

A. $240,000.

Q. It was agreed that of the $275,000 you were to receive on that contract instead of your receiving $225,000 you were to receive $240,000?

A. Yes, sir.

Q. Where did that agreement take place?

A. That took place in Mr. Patterson's office.

Q. It was agreed between you and Everett that instead of you having the difference between $275,000 and $225,000 you should only have $240,000?

A. That difference Mr. Everett never put in his language. He never spoke of it in that way. He spoke of that money going to the founders—to the middle men on the other side.

Q. This money was to go to Everett and Robinson. My understanding of your testimony now is when Everett came out here, in December, 1883, it was agreed between you and Mr. Everett that instead of your receiving $225,000, which you were to receive under the papers previously executed and under the understanding that had been arrived at between you, you were to receive an additional too——

A. No, sir; no additional sum. That contract was set aside. We commenced the contract on the basis of $30 a head. I repeated that probably fifty times or more when different questions came
160 up. I would say, Gentlemen, I don't care how you arrange it, so that I get $30 for my cattle, $50 for my horses, and $50,000 for my ranch and ranch privileges. Now, I don't care how you arrange this. I repeated several times I didn't want any technical points by which they would break my heart, for I had that in heart. I was afraid.

Q. You understood you had on the ranch about 8,000 head of cattle?

A. No, sir; I did not; 6,000 was all I guaranteed to turn in. I told them — guaranteed and did turn over 6,000 and all above that. I told them there was not 9,000 — my books called for, but I was sure some of them had died. I went on to tell of some of the hard winters we had had, as every one of my neighbors knew well and all of my men.

Q. Between the negotiations pending in Chicago in August, 1883, and the 15th of December you advanced your price $15,000?

A. Well, that was the basis.

Q. Did you advance your price as between you, Mr. Everett, and Mr. Robinson $15,000 between those dates?

A. My basis when I entered in with Mr. Everett was just as I tell you, amounting to $240,000, calculating at $30 a head; that was our understanding.

Q. Mr. Everett agreed that of the $275,000 you were to have $240,000?

A. That was the clear understanding. I was to have $240,000 and pay him $5,000. It was worded time and time again the cattle, $30; the horses, $50; the ranch, realty, fences, &c., $50,000. That was repeated a number of times—fifty at least. That letter of Mr. Patterson that he answered points right to that. Every one
161 that heard our conversations understands that to be the case.

Q. You say that you were ashamed of this $275,000 contract; will you state why you were ashamed?

A. Well, of allowing a man to talk me into something I did not want to do. I proposed to manage my business without being talked into something I don't want to do.

Q. Do you mean that you objected to signing it because it was for such a large sum?

A. No, sir; simply because I had signed one contract for a certain amount and then signed another contract for another amount. I knew it was not a legal way to do business; I knew that; I hesitated some time before I did it. Mr. Robinson and Mr. Everett insisted there was no harm; Mr. Robinson had done my commission business there in Chicago for a number of years. I had a great deal of confidence in him, and always entrusted my business with him.

Q. You stated the first time Mr. Robinson or Everett ever suggested or demanded that you should pay the difference between $225,000 and $275,000 named in the contract of sale was about the time you signed the contract. What contract do you refer to?

A. Yes, sir; the contract signed by the London parties.

Q. Up to that time you had never heard Mr. Robinson and Mr. Everett claiming that you were to pay them more than $5,000?

A. That was my first recollection of their approaching me in regard to it.

Q. Or that matter being mentioned?

A. It was mentioned in that article they sent to me; that was right two days before they arrived here.

Q. They sent that to you some time early in February?

A. I received that contract—that thing they wanted me to
162 sign—either—will you pardon me a moment and let me finish—probably six or seven days before they arrived here.

Q. What is the date of that instrument; that is dated the 2nd of February?

A. Yes, sir; they sent me—I received that a few days before they arrived. I took that instrument to Mr. Patterson and asked him if — thought it was proper; yes, sir.

Q. After consulting Mr. Patterson you declined to sign it?

A. When they came out Mr. Patterson told them he had received that communication; he took them to his copy books; they did not say a word to him about paying a commission—did not open their heads to him about paying commission—until the day, I think, or the day before, the first time either of them opened their mouths about it.

Q. When was that?

A. It was about my going into a contract with them—signing an obligation with them. I insisted positively that I would not do it; for something I have not got I will not sign for. I said, Gentlemen, I have not got this, and you expect me to sign a contract for something I have not got. I insisted I would not do it. Afterwards I drew this contract you have in your possession now. I am satisfied, if you will produce it, it will show exactly our ideas. Mr.

Everett drew part of it. As I told Mr. Robinson, I did not claim this surplus money in the contract. I told everybody who was there, as they will testify, I did not claim that money. After we drew that contract we drew this article; Mr. Everett drew his first; I would not sign it; I drew one modifying it, showing what I would do. Whether I signed that or not I don't know, but at any
163 rate Mr. Everett kept it and would not speak to me about it again, and if you gentlemen will produce that now you will see our understanding.

Q. Did Mr. Patterson express your reasons for refusing to sign the contract sent from Chicago? The letter was written after consultation between you and him?

A. Yes, sir; I went to his office and showed him this paper; he sat down and wrote this letter in my presence.

Q. Did that letter express your objection to signing the contract or his?

A. Well, as far as he spoke of the technical point, as far as the technical point is concerned, I have expressed to Mr. Patterson several times that I feared technical points that Mr. Everett might raise on me, and warned him in particular to guard against them.

Q. You imagined in this contract something that was technical and might get you in trouble?

A. I didn't; that was a conclusion he came to himself.

Q. Mr. Patterson came to the conclusion that there was something technical in it?

A. He came to the conclusion that that was my idea. I didn't word it to him. I didn't dictate it.

Q. You don't pretend that Mr. Patterson advised you there was anything technical in that?

A. No, sir; he did not. Allow me to state what he said in the letter.

Q. The letter speaks for itself, so far as that goes. I understood you to say you drew up and presented to Mr. Robinson or Everett about the time this matter closed up your understanding?

A. That expressed what I was willing to do with them.
164 Now, Mr. Robinson plead- for me to do something.

Q. Did that contract you drew up and submitted to them express your understanding of what you had previously contracted, or was it an offer on your part to compromise with them, or something which was——

A. It was an offer of compromise so as to save trouble. They threatened to——

Q. Is that the paper?

A. Yes; it is; that is the paper.

(Paper shown to witness.)

Q. Now, this is the proposition you submitted to Mr. Robinson at the hotel?

A. Yes, sir.

Q. When was this done?

A. I don't remember the date.

Q. In what stage of the negotiations that occurred here—was it before or after the sale had been closed up?

A. After the sale was closed.

Q. Do you mean to say it was after the 21st of April?

A. Yes, sir.

Q. Was Mr. Everett here at the time?

A. Yes, sir.

Q, I understood you to say you submitted this paper to Mr. Everett?

A. Mr. Robinson handed it to Mr. Everett.

Q. Mr. Everett was here at the time you wrote this paper?

A. Yes.

Q. Don't you know Mr. Everett was not here, and at the time of the date of the contract he could not have been?

165 A. I think he was here then, but left shortly after.

Q. He was here at the time you submitted this paper, but he was not here at the time the sale was consummated, in April?

A. I think he was here; he came out with Mr. Robinson.

Q. You don't say he stayed here?

A. I am satisfied he went home before Mr. Robinson. Doesn't the date on that show?

Q. There is no date to it. It is in your handwriting; all of it. You said something about—you spoke of Mr. Everett. What part of this contract did he write?

A. He submitted a contract to me, Mr. Everett did, something on the same principle, but not exactly the same. He provided for my obligating myself to pay this amount, giving my obligation. He submitted a contract, and then I used part of his words and part of my own composition and formed that.

Q. What part of this composition is Mr. Everett's?

A. I am sure I could not say. I remember part of his was agreeable to me.

Q. Can you state what part it was?

A. I cannot, I must say.

Q. Was it that part whereby you ask Mr. Robinson to agree to pay you $1,000 for the furniture and carriage you were to turn over under your contract?

A. That was understood between us all.

Q. When?

A. Down at the ranch.

Q. During these negotiations?

A. Yes, sir; this furniture and carriage was a part of the property. It was a car-load of furniture I brought out to the ranch after

166 I had made this proposition, furnished the house, and a two-horse carriage, and I said to him that was no part, as they all understood, and Mr. Robinson made me that offer—a thousand dollars—and I accepted of it; that he would stand $1,000 if I would let that go right in the trade so as not to interfere. That was the purpose he wanted.

Q. Did he go in?

A. Yes, sir.

Q. Did the company get the carriage and horses?

A. Yes, sir; they got the carriage.

Q. It was turned in under your contract of sale?

A. Yes, sir; it was turned in.

Q. The contract, the modification of the contract, occurred after the ranch had been visited, did it not?

A. Yes, sir.

Q. You say you submitted this to Mr. Everett. It never was returned. It is not signed.

A. Yes, sir; Mr. Robinson and I were sitting together when I made that out in the St. James, as near as I can remember.

Q. You think this was after the sale had been concluded and the papers passed between you and the English company?

A. It is my opinion. I think it was after that time. That is my recollection of it.

Q. Did Mr. Robinson or Mr. Everett object to this?

A. Mr. Robinson took it to submit to Mr. Everett, and Mr. Robinson, when he returned, he said Mr. Everett was not satisfied with it, and he never brought it back to me. I tried to get it from him afterwards; he would not let me look at it. I asked Mr. Wells for it. As to the date of its being drafted, I could not give that;
167 it is not on there; I don't remember it to-day.

Q. It was drawn, however, by you at the hotel while Mr. Robinson and Mr. Everett were both in the city?

A. Yes, sir; it was something like my speaking about the $192,000. I say if I did state the date exactly it might turn out as the $192,000 did, whereas it was $182,000; I want to correct that.

Q. You made it $182,000?

A. I have not looked it over yet; I want to look it over.

The COURT: Let that be deferred. Look it over after the examination is over and make any statement about it you wish.

The WITNESS: I want to put myself right on it.

Redirect examination of WILLIAM J. WILSON by Mr. PATTERSON:

Q. Mr. Wilson, under this contract did you deliver six thousand head of cattle and over?

A. I did, sir.

Q. Did you deliver two hundred head of horses and over?

A. I did, sir; and have got receipts for them all now.

Q. See if I understand with reference to this furniture that is mentioned in this item between yourself. After you executed the contract that was sent to England you bought a car-load of furniture and brought it to the ranch?

A. Yes, sir.

Q. And also a two-horse carriage?

A. Yes, sir; sent the two-horse carriage from Denver. They were not included in any of the previous negotiations.

Q. When the parties came out to the ranch you stated that that was not included in the sale?

168 A. Yes.

Q. Then it was that Mr. Robinson proposed if you would allow it to go in on the contract he would give you $1,000 for it?

A. Yes, sir.

Q. That is what is referred to in this instrument. Did you intend to be exact or accurate in stating the time when this instrument was drawn?

A. No, sir; I could not; the date is not on it. I would like to state——

Q. You are giving your best recollection as to the time?

A. It was about the time we were here—Mr. Everett, Mr. Wilkes, and myself; it was during that time.

Q. Have you ever seen the counter-proposition—the proposition or writing that Mr. Robinson drew up, presented to you, and wanted you to sign—since he presented it to you?

A. I have not; they have it, probably, now; they can produce it.

By Mr. McNeal:

Q. This negotiation about the sale of the carriage and horses, was that out at the ranch?

A. Yes, sir.

Q. Who was present at that?

A. I could not say.

Q. Mr. Everett and Mr. Robinson were both out there?

A. Yes, sir; and Mr. Wilkes and four or five others.

Q. Mr. Everett and Mr. Robinson were present when this negotiation was had about the carriage and horses?

A. I hardly know who was present when the talk was made; it is carriage, furniture, and dishes; everything that went to furnish the house.

Q. Do you mean to say that Everett and Robinson agreed
169 at that time they would pay you $1,000 for the furniture and carriage?

A. Yes, sir.

Q. Did you ever call on them for it?

A. No, sir; Mr. Robinson and me and Mr. Everett, when we were trying to draw up this—trying to come to a conclusion in regard to this—it was mentioned; we both mentioned it. In their instrument they had that day, mentioned it; if you have got that instrument they had that day, mentioned it; if you have got that instrument you will see.

Q. I have told you we hadn't any instrument of that kind. These were merely offers between you, Robinson, and Everett to compromise.

A. We concluded in regard to it. I showed them the bills, what this furniture cost me—a car-load of it.

Q. I understand you tendered $5,000?

A. Yes, sir; I just tendered the $5,000; tendered it in words, as Mr. Hughes told me it was legal. I was very tired of the business.

I was very tired, and would have given a good deal to have gotten out of it.

By Mr. PATTERSON:

Q. In the chattel-mortgage sale, state whether or not, in addition to the wagons, furniture, cattle, and live stock, you sold all other personal property in and about the ranch, including the wire fence and corrals and everything of that character.

A. Yes, sir; I sold everything appertaining to the Circle ranch with the exception of the realty; that I held in my hands—my name.

By Mr. MCNEAL:

Q. Did you sell the carriage and furniture at that sale?

A. Yes, sir.

170 Q. Who bought that?

A. Edwin Wilson bought carriage and furniture.

Q. What became of it afterwards?

A. He has got them right now.

Q. When did you deliver and how did you deliver this six thousand head of cattle?

A. Well, we run them through a shute.

Q. When?

A. During the summer of 1884.

Q. Who was present to receive them?

A. Mr. Wilkes.

Q. You counted over six thousand head?

A. Counting them one at a time; didn't have but six or seven head at a time, so that Mr. Wilkes could go and look at all the brands and tally the different ages, and then take a brand and put on a counter-brand on each and every animal separately.

Mr. Patterson asked leave to recall Mr. Wilson as to how much was received all together from all sources.

Mr. W. S. EVERETT recalled in rebuttal.

Q. You heard Mr. Wilson's testimony with reference to the agreement about this carriage and furniture, this $1,000. State to the jury what you know about that.

A. My first intimation was in a written proposition of Mr. Wilson.

Q. Was there any written agreement of that kind?

A. Not that I am aware of.

Q. You never heard of any such agreement as that; you

171 never assented to it?

A. No, sir; any conversation he and Mr. Robinson had was evidently when I was not present at it.

Q. When was this instrument handed to you?

A. It was handed to me in the St. James Hotel, late in the afternoon, either in the latter part of March or early in February, before I left for home; it was prior to the completion of the sale. I was not present at the concluding. Mr. Robinson came out; I did not.

Q. You heard Mr. Wilson's testimony in reference to the time that you came out here; you brought the English contract; at the visit you concluded that you heard his testimony with reference to the fact that at that time, when the agreement was consummated, it was thoroughly understood his price then was $240,000. I wish you would state to the jury what you know about that.

A. I did not so understand it; there was nothing done or nothing said, I can recall, at all which tended in any way to affect or change the price from $220,000; that was what we first agreed upon—what Wilson had agreed upon all the way. This change was not made in my presence. I have no recollection of any conversation as to a price per head as to the cattle or horses. We frequently figured so as to make it $225,000 or $410,000; that was done merely for personal gratification—satisfaction; no contract about it.

Q. Did you go out with Mr. Robinson at the time he went out there?

A. I went out at the time Mr. Robinson came. I was one of the party.

Q. Was Mr. Wilson at the ranch?

A. Mr. Wilson was at the ranch at the time. I think he
172 went with us.

Cross-examination by Mr. PATTERSON:

Q. Mr. Everett, do you say that when you were out at the ranch there was no conversation between Mr. Wilson and anybody else in your presence; no conversation about furniture on the ranch?

A. No, sir; we were all very much pleased at the house the way it was furnished and the accommodations; it was much better than we expected, and all that. I do say there was no conversation as to selling this.

Q. Was anything said by Mr. Wilson about the furniture; the two-horse carriage not being included in the contract of sale?

A. There might have been something of that kind, that it was not included. There was no contract by which we obligated ourselves to assume the $1,000. The agreements speak for themselves.

Q. Did not the contract of sale go on and specify the personal property, even to the number of wagons and the number of mowing machines, plows, harnesses, saddles, all of which were included in that sale? Was there a word said in that contract about furniture or a two-horse carriage?

A. I think not.

Q. Was it not a fact that the furniture and the two-horse carriage was not included in any sale prior to your going out to the ranch?

A. I don't recollect or recall any conversation. Repeat your question.

Q. Is it not a fact that the two-horse carriage and the furniture in that house was not included in any sale that had been
173 made or any instrument of writing that Mr. Wilson had given prior to your going out to the ranch?

A. I will say those things were not itemized or specified in the contract.

Q. Were they alluded to in that?

A. I don't know that they were specifically alluded to in any way.

Q. Were they alluded to even generally?

A. I will say generally it embraced everything that was on the ranch.

Q. Was there a word said while they were enumerating plows and wagons, and matters of that sort—harness and saddles? Was there one word said about a two-horse carriage, or about the furniture in the house?

A. I don't think there was; I don't recall any.

Q. Was your attention not called to the fact as soon as you went out that the two-horse carriage and furniture were not included in the sale and had been brought to the ranch after the contract was signed?

A. No, sir; I don't recall any such conversation.

Q. Did not Mr. Wilson and Mr. Robinson both together talk with you upon that subject, calling your attention to the dishes, the furniture, and the two-horse carriage that was out there and had been brought there since; was not there an agreement and understanding had he was to be allowed $1,000 for them?

A. Our attention was called to those things, but simply as a part of the make-up of the property.

Q. Now, Mr. Everett, you say the first time—you say dur-
174 ing the negotiations nothing was said about $30 a head for the stock and $50 a head for the horses. Was not that matter mentioned between you and Mr. Wilson repeatedly during the negotiations for the contract, Mr. Wilson stating to you—that is, in my office, when you were here in December and striving to get this contract up—all I want is $30 a head for the cattle, $50 a head for the horses, counting ranch, water rights, and improvements on it at $50,000; was not that repeatedly mentioned by Mr. Wilson?

A. I don't think it was ever mentioned in making up the consideration he was to receive for that property. There was a great deal of conversation. We were a week or more at it.

Q. In the letter I wrote you in February, which I showed you when you came here with the English parties, were they not specifically set forth?

A. I did not make any objections nor did I accept. It was your statement, which I presumed you had made. I felt, furthermore, that was, perhaps, what Mr. Wilson was claiming from us. I knew I had never assented in writing or any other way to that. I stood by the original agreement all the way

Q. That was your proposition—the agreement made August 17th—was the agreement you were standing by all the way through?

A. So far as the consideration was concerned, yes, sir.

WILLIAM J. WILSON recalled for defendant.

By Mr. PATTERSON:

Q. State whether or not that is the correct amount of what you have received altogether—182,000 and some odd dollars.

175 A. Yes, sir; that is the amount, one hundred and eighty-two thousand four hundred and sixty-eight dollars and seventy-five cents.

Cross-question by Mr. MCNEAL: Do you make any deduction from that for what you paid on account of the expenses of the ranch?

A. No, sir.

And the foregoing was all the testimony introduced on the trial of said cause.

And thereupon the court gave to the jury the following instructions:

"The difference between these parties seems to have arisen out of a failure on their part to distinctly arrange the terms of their agreement at the outset—to have it distinctly understood as to what their contract was in the very beginning, and of course to keep that in mind throughout all the negotiations. It often happens that one party may request another to perform a service for him, and without more; nothing being said as to any compensation for it, their agreement is imperfect in that they have not specified the compensation and how it shall be paid.

Of course, whenever an agreement is complete, whenever it contains every detail, there is little room for controversy in relation to the matter, unless, indeed, they have failed to put it in writing or there is some room for dispute as to the terms.

The position of the plaintiffs in this case—I shall speak

176 of them as plaintiffs, because the arrangement, whatever it was, was made with two parties, one of whom is now dead, and the other stands in the suit as the survivor and entitled to insist upon the contract in the name of both—their position is that there was a distinct understanding and agreement between themselves and the defendant at the time these transactions begun, and that the sale was carried on to completion with a view of this understanding and agreement.

The defendant's position is that there was such an understanding and agreement also, but that it was entirely different from that which is stated by the plaintiffs. If there had been no agreement at all as to compensation, no understanding as to what the compensation should be to the plaintiffs for what they should do towards this sale, then the plaintiffs would be in the position that they would ask for a reasonable compensation. Taking that position in the suit, it would be their duty to show what such reasonable compensation is. In such case the proof offered would be from persons who are familiar with that sort of business as to what is generally paid for that kind of work. There are brokers of all sorts—real estate brokers and stock brokers and so on—people who are engaged in the business of

selling various kinds of property, and in the case of the employment of any such person to perform any such service, in the absence of an express contract as to what shall be paid for the service—that is usually a general rule—that is, by the custom of people engaged in that business—they are entitled to charge one or another per cent. for the transaction which they may carry on.

177 The plaintiffs have not taken the position in the suit here that this was the attitude of affairs between themselves and the defendant. They have not said that they were in the position of brokers to make sale of this kind of property, and that they were acting merely upon a request of the defendant without any understanding or agreement as to the compensation to be paid for it, but they say that there was an express agreement and understanding as to the compensation to be paid. The defendant also is in the position of saying that there was an express agreement and understanding differing from that alleged by the plaintiffs, so that there seems to be no room in this case for saying that the plaintiffs were acting merely upon a request from the defendant to make sale of this property, and may be entitled to what in your judgment may be regarded as a reasonable compensation for the service by them rendered.

In other words, the parties relying upon an express agreement, it must be found that there was one on which the plaintiffs are entitled to a certain compensation, and in the absence of proof of that kind to your satisfaction then the plaintiffs cannot be entitled to recover.

Now, there is little room to doubt as to the meaning of the first papers that were executed between these parties—the two papers which were executed in August, I think, 1883—the one which said something about a sale to the plaintiffs in the suit and the other which said something more about a sale to certain parties in England. In so far as they relate to the relations between the plaintiffs and defendant they constitute only an authority on the part of the defendant to the plaintiffs to make sale of the property, and, un-

178 doubtedly, there was in those papers, and by the understanding of the parties which was not expressed in the papers themselves, but may be fairly inferred from the terms of those agreements, and which appears to be consistent with all that took place between them at that time, there was an agreement that Mr. Wilson should have for this property the sum of two hundred and twenty-five thousand dollars and the plaintiffs should have fifty thousand dollars more out of the proceeds of the sale, the property to be sold to these English parties for two hundred and seventy-five thousand dollars. Mr. Wilson strongly insists that the understanding at this time was that he was to have his two hundred and twenty-five thousand dollars first—that is, this was to be paid him—and the others were to have this sum above the two hundred and twenty-five thousand if they could get it, but as apparently the parties were then expecting to make a cash transaction, assuming that the property would be sold for money, it could make very little difference who should be first paid. If two hundred and

seventy-five thousand dollars should come upon the sale there would be fifty thousand dollars for the plaintiffs and two hundred and twenty-five thousand for Mr. Wilson without further question. As matters went on between Mr. Wilson and the English parties, Mr. Wilson, as vendor of this property, and the English people, as purchasers, it was found that a sale for cash could not be made; considerable negotiation took place between them, and it turned out at last that the English people were willing to purchase at four hundred and ten thousand dollars, one hundred and seventeen thousand four hundred to be in stock to go to some of them—it does not matter who—and two hundred and ninety-two thousand six hundred to go to the parties on this side, Mr. Wilson and the plaintiffs, perhaps."

(Mr. McNeal: Except six per cent., if your honor please.)

The Court: Except six per cent., which was to go to the
179 people over there—six per cent. cash, which was to be paid; and of this one hundred and ninety-two thousand six hundred dollars a large part was to be in deferred payments; there was only sixty-three thousand eight hundred and fifty dollars to come very soon; fifty thousand down and thirteen thousand eight hundred and fifty dollars in a very short time; the rest in one and two years.

And the court further instructed the jury as follows:

"Now, with such an arrangement as this, obviously if it was carried out upon those terms it was going to be a question of some importance as to who was to wait for the deferred payments—if the plaintiffs were to wait or the defendant, Mr. Wilson, and whether Mr. Wilson would be responsible directly to the plaintiffs for this money or whether he was only to stand in the relation of a sort of trustee for them, and to give them the money whenever he should get it from the English company; and, so far as I can see in the evidence, there is nothing very explicit upon that subject, as to any understanding or agreement between them, unless it may be what occurred in Chicago in February, 1884, about the time these parties were coming over to look at the property."

To which instructions by the court the defendant, by his counsel, then and there duly excepted.

And the court further instructed the jury as follows:

"I think Mr. Everett says that then there was an express understanding he was not only to have fifty thousand dollars, which was in the understanding and agreement of the parties up to that time, but that he was to have ten thousand more, and five thousand more, making sixty-five thousand in all, and that this was all to be paid by Mr. Wilson if the contract should go on. I believe Mr. Wilson denies this."

180 To which instruction by the court the defendant, by his counsel, then and there duly excepted.

And the court further instructed the jury as follows:

"Some further negotiations took place between the parties after that in relation to this matter. Mr. Everett was anxious to have

Mr. Wilson sign an agreement upon that subject. (I wish you would hand me those papers.) Mr. Everett states that this was endorsed upon the contract of August 17, 1883, and shown to Mr. Wilson in Chicago: "I hereby affirm and ratify the within agreement, and further agree that the sum of five thousand dollars provided in the contract signed by me in Denver, December 24th, 1883, is no part of the purchase price due me and shall be paid as commissions as and when the purchase price for said Circle ranch shall be paid." And after Mr. Wilson came away from Chicago at that time, February, 1884, he states that he sent him a copy of the same paper with a copy of the agreement of August 17th, 1883, above it, making it in the copy in precisely the same terms as he says were offered to Mr. Wilson in Chicago. This was not signed by Mr. Wilson, and I think Mr. Patterson wrote a letter on the subject, dated February 11th. Well, we can give you these papers, gentlemen; you can look them over and see what you can make of them.

"You will recall also that while these negotiations were going on here in Denver Mr. Wilson himself drew up a paper, if I understand correctly, and presented it to Mr. Robinson, who showed it to Mr. Everett, and that was not acceptable to them, but still the parties went on with the negotiations and the contract was closed."

And the court further instructed the jury as follows:

"Now, the question is what you can gather from all that took place between them in the way of an agreement on the part of
181 Mr. Wilson to pay these parties for their services. Was there any agreement to pay them for their services; and, if so, how

by the defendant.

(5.) The verdict of the jury is contrary to law.

(6.) The verdict of the jury is contrary to the evidence.

(7.) The verdict of the jury is not sustained or warranted
185 by the testimony.

(8.) The verdict of the jury is against the great weight & preponderance of the testimony.

(9.) And for other good & sufficient reasons.

(Signed) PATTERSON & THOMAS,
Att'ys for Def't.

And the court, after argument upon said motion and being fully advised, did overrule said motion and did render judgment upon the verdict.

To which ruling of the court in overruling said motion for a new trial the defendant, by his counsel, then and there duly excepted.

fairness, or that he had not proceeded in the proper time and manner. Counsel for defendant was saying to you that Mr. Wilson was bound to proceed at that time under the chattel mortgage.

"Now, I have to say to you that, on the one hand, Mr. Wilson was at liberty to proceed apparently by the terms of his chattel mortgage and make this sale. I do not see anything in the account of the sale which was here given which should arouse any suspicion as to its fairness or that it was not well made, according to the law regulating such matters.

"On the other hand, I can say that Mr. Wilson was not under an obligation to proceed at that time—that is, he was not required
182 to proceed in order to keep good his lien, because the last payment under the mortgage had not then become due. He was at liberty to wait until the last payment should become due before it would become necessary for him to take possession of the property in order to make his lien good against other creditors of the company, but the circumstances were, perhaps, a little embarassing to him. He was advancing money to carry on this ranch. By the terms of an agreement, which was made at the time of this contract, he became responsible for the expenses of the ranch, as I understood him, and he was paying out money upon that account. He says that he had already paid out some sixteen thousand dollars and more in that way, and perhaps it was not unreasonable in him to ask that payments should be made as they came due under his contract, and thus relieve him in some measure from the duty which was upon him to carry on the ranch. I do not think there is anything in the transaction in respect to the sale of this property upon which you can proceed to fix the liability upon the defendant in relation to this matter, and I say to you that if it appear to you that he was to pay any sum of money for the services of the plaintiffs upon the execution and completion of this contract, then the plaintiffs may be entitled to that."

To which instruction the defendant, by his counsel, then and there duly excepted.

And the court further instructed the jury as follows:

[illegible] ance as to who was to wait for the deferred payments—if the plaintiffs were to wait or the defendant, Mr. Wilson, and whether Mr. Wilson would be responsible directly to the plaintiffs for this money or whether he was only to stand in the relation of a sort of trustee for them, and to give them the money whenever he should get it from the English company; and, so far as I can see in the evidence, there is nothing very explicit upon that subject, as to any understanding or agreement between them, unless it may be what occurred in Chicago in February, 1884, about the time these parties were coming over to look at the property."

To which instructions by the court the defendant, by his counsel, then and there duly excepted.

And the court further instructed the jury as follows:

"I think Mr. Everett says that then there was an express understanding he was not only to have fifty thousand dollars, which was in the understanding and agreement of the parties up to that time, but that he was to have ten thousand more, and five thousand more, making sixty-five thousand in all, and that this was all to be paid by Mr. Wilson if the contract should go on. I believe Mr. Wilson denies this."

180 To which instruction by the court the defendant, by his counsel, then and there duly excepted.

And the court further instructed the jury as follows:

"Some further negotiations took place between the parties after that in relation to this matter. Mr. Everett was anxious to have

sideration. The force and strength of the evidence is entirely as it shall stand with you and affect your judgment."

And the foregoing were all the instructions given to the jury on the trial of said cause.

And thereupon & thereafter the jury retired to consider
184 of their verdict, and the jury rendered a verdict in favor of plaintiff.

And thereupon the defendant filed his motion for a new trial in said cause, which motion is in words and figures as follows:

In the Circuit Court of the United States for the District of Colorado.

WILLIAM S. EVERETT *vs.* WILLIAM J. WILSON.

Comes now the above-named defendant, William J. W. Wilson, and moves the court for a new trial in the above-entitled cause for the following reasons, to wit:

(1.) The court erred in admitting improper, irrelevant, & incompetent testimony.

(2.) The court erred in refusing to admit competent, relevant, & pertinent testimony in behalf of the defendant in said cause.

(3.) The court erred in giving to the jury irrelevant, incompetent, & improper instructions, each & all of which were prejudicial to the lawful rights of the defendant.

(4.) The court erred in refusing to instruct the jury as requested by the defendant.

(5.) The verdict of the jury is contrary to law.

(6.) The verdict of the jury is contrary to the evidence.

(7.) The verdict of the jury is not sustained or warranted
185 by the testimony.

(8.) The verdict of the jury is against the great weight & preponderance of the testimony.

(9.) And for other good & sufficient reasons.

(Signed) PATTERSON & THOMAS,
Att'ys for Def't.

And the court, after argument upon said motion and being fully advised, did overrule said motion and did render judgment upon the verdict.

To which ruling of the court in overruling said motion for a new trial the defendant, by his counsel, then and there duly excepted.

fairness, or that he had not proceeded in the proper time and manner. Counsel for defendant was saying to you that Mr. Wilson was bound to proceed at that time under the chattel mortgage.

" Now, I have to say to you that, on the one hand, Mr. Wilson was at liberty to proceed apparently by the terms of his chattel mortgage and make this sale. I do not see anything in the account of the sale which was here given which should arouse any suspicion as to its fairness or that it was not well made, according to the law regulating such matters.

186 (Endorsed:) 1893. Circuit court United States. William S. Everett *vs.* Wm. J. Wilson. Bill of exceptions. Filed July 20, 1887. (Signed) William A. Willard, clerk. Patterson & Thomas, attorneys for def't.

And afterwards and on the same day, to wit, the 20th day of July, A. D. 1887, came again the said defendant, by his attorneys aforesaid, and filed in said court and in said cause his bond and sued out of said court a writ of error and citation to the Supreme Court of the United States.

And the said bond is in words and figures as follows, to wit:

Bond.

THE UNITED STATES OF AMERICA, *District of Colorado:*

Know all men by these presents that William J. Wilson, as principal, & Fine P. Ernest & Dennis Sullivan, as sureties, are held and firmly bound unto William S. Everett in the full and just sum of twenty thousand dollars, to be paid to the said William S. Everett; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 13th day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately at the November term, A. D. 1886, of the circuit court of the United States for the district of Colorado, in a
187 suit pending in said court between William S. Everett, for himself and as survivor, &c., and William J. Wilson, defendant, judgment was rendered against the said William J. Wilson for the sum of ten thousand dollars and costs of suit, and the said William J. Wilson having obtained a writ of error to reverse the judgment of said court, and a citation, directed to the said William S. Everett citing, and admonishing him to be and appear at a term of the Supreme Court of the United States to be held at Washington, D. C., on the — day of November next:

Now, the condition of the above obligation is such that if the said William J. Wilson shall prosecute said writ of error to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

(Signed) WILLIAM J. WILSON. [SEAL.]
" FINIS P. ERNEST. [SEAL.]
" DENNIS SULLIVAN. [SEAL.]

Approved July 20, 1887.
(Signed) MOSES HALLETT, *Judge.*

Justification.

THE UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

Finis P. Ernest and Dennis Sullivan, sureties on the within bond, being each first duly sworn, deposes and saith that he is
188 worth in — the sum below set opposite his name—that is to say: As to Dennis Sullivan, 20,000.00 dollars; as to Finis P. Ernest, 20,000.00 dollars, over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

(Signed) FINIS P. ERNEST.
" DENNIS SULLIVAN.

Subscribed and sworn to before me, at Denver, this 14th day of June, A. D. 1887.

(Signed) WILLIAM A. WILLARD, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

(Endorsed:) Gen. No., 1893. Circuit court of the United States, district of Colorado. Wm. S. Everett *vs.* Wm. J. Wilson. Bond on writ of Error. $20,000.00. Filed this 20th day of July, A. D. 1887. (Signed) William A. Willard, clerk, by F. W. Tupper, deputy clerk.

And the said writ of error, with the return of the clerk thereto, is next hereto attached, to wit:

Writ of Error.

189 Writ of error to circuit court U. S., district of Colorado.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

The President of the United States to the judges of the circuit court of the United States for the district of Colorado, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court between William S. Everett, plaintiff, and William J. Wilson, defendant, a manifest error hath happened, to the great damage of the said William J. Wilson, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2d Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further

to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 20th day of July, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the 111th year.

[Seal United States Circuit Court, District of Colorado.]

WILLIAM A. WILLARD, *Clerk.*

Allowed by—
MOSES HALLETT, *Judge.*

[Endorsed:] Gen. No. 1893. Circuit court of the United States. William J. Wilson, plaintiff in error, *vs.* William S. Everett, def't in error. Writ of error to circuit court U. S., district of Colorado. Filed in circuit court of the U. S. this 26th day of July, A. D. 1887. William A. Willard, clerk, by F. W. Tupper, deputy clerk. Patterson & Thomas, attorneys for plaintiff in error.

Return.

THE UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In obedience to the command of the within writ I herewith transmit to the honorable the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same, save and except a copy of the bill of exceptions and motion for new trial filed herein by the plaintiff.

Witness my hand and the seal of said circuit court, at Denver, in said district, this third day of October, A. D. 1887.

[Seal United States Circuit Court, District of Colorado.]

WILLIAM A. WILLARD, *Clerk.*

We accept service of copy of the within writ of error this 21st day of July, A. D. 1887.

WELLS, McNEAL & TAYLOR,
Att'ys for Everett et al.

190 And the said citation is next hereto attached, to wit:

Citation.

191 Citation, U. S. circuit court.

THE UNITED STATES OF AMERICA, *District of Colorado:*

The United States of America to William S. Everett, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C.,

on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Colorado, wherein William J. Wilson is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, judge of the district court of the United States for the district of Colorado, this 20th day of July, in the year of our Lord one thousand eight hundred and eighty-seven.

MOSES HALLETT, *Judge.*

191½ [Endorsed:] Gen. No. 1893. Circuit court of the United States, district of Colorado. Wm. J. Wilson, plaintiff in error, *vs.* Wm. S. Everett, defendant in error. Citation. Filed in circuit court of the U. S. this 26th day of July, A. D. 1887. William A. Willard, clerk, by F. W. Tupper, deputy clerk. Patterson & Thomas, attorneys for plaintiff in error.

Proof of Service.

THE UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

On this — day of ——, A. D. 18—, personally appeared —— —— before me, the subscriber, a clerk of the — court of the United States for the district of Colorado, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed before me this — day of ——, A. D. 18—.

—— ——, *Clerk,*

By ——,

Deputy Clerk.

We accept copy of the within citation this 21st July, 1887.

WELLS, McNEAL & TAYLOR,

Att'ys for Everett et al.

192 And afterwards and on, to wit, the 19th day of September, A. D. 1887, came said defendant, by his attorneys aforesaid, and filed in said court and in said cause his *præcipe* for a transcript of the record to the Supreme Court of the United States.

And said *præcipe* is in words and figures as follows, to wit:

Præcipe.

UNITED STATES OF AMERICA, *District of Colorado:*

In the Circuit Court of the Eighth Judicial Circuit in and for said District.

WM. S. EVERETT *et al.*
vs.
WM. J. WILSON. } No. 1893.

The clerk of said court will please prepare a transcript of the record in said cause for filing in the Supreme Court of the United States at the next term thereof, said transcript to consist of all pleadings and record entries, bill of exceptions, bond, writ, citation, and assignment of errors, and have same ready, if possible, by the 3rd day of October, A. D. 1887, & oblige,

Dated Sept. 19th, 1887.

(Signed.) PATTERSON & THOMAS,
Att'ys for Def't, W. J. Wilson.

(Endorsed:) 1893. Wm. S. Everett *vs.* Wm. J. Wilson. *Præcipe.* Filed Sep. 19, 1887. (S'g'd) William A. Willard, clerk.

193 And afterwards and on the 4th day of October, A. D. 1887, came again the said defendant, by his attorneys, aforesaid and filed in said court and in said cause an assignment of errors and prayer for reversal; and the said assignment and prayer is hereto attached, to wit:

Assignment of Errors and Prayer for Reversal.

194 UNITED STATES OF AMERICA, *ss:*

In the Circuit Court of the United States.

WILLIAM J. WILSON, Pl'ff in Error,
vs.
WILLIAM S. EVERETT, Def't in Error.

Comes now the above-named appellant, by Thomas M. Patterson and Charles S. Thomas, his attorneys, and says there is manifest error apparent upon the face of the record in the above-entitled cause in this—

(1.) That the court in instructing the jury charged the jury as follows:

Now, with such an arrangement as this, obviously, if it was carried out upon those terms, it was going to be a question of some importance as to who was to wait for the deferred payments—if the

plaintiffs were to wait or the defendant, Mr. Wilson, and whether Mr. Wilson would be responsible directly to the plaintiffs for this money or whether he was only to stand in the relation of a sort of trustee for them and give them the money whenever he should get it from the English company; and, so far as I can see in the evidence, there is nothing very explicit upon that subject as to any understanding or agreement between them, unless it may be what occurred in Chicago in February, 1884, about the time these parties were coming over to look at the property.

To which instruction by the court to the jury the appellant, by his attorneys, then and there duly excepted.

(2.) That the court in instructing the jury charged the jury as follows:

I think Mr. Everett says that then there was an express understanding he was not only to have $50,000, which was in the understanding and agreement of the parties up to that time, but that he was to have ten thousand more and five thousand more, making sixty-five thousand in all, and that this was all to be paid by Mr. Wilson if the contract should go on. I believe Mr. Wilson denies this.

And to which instruction so given by the court to the jury appellant, by his attorneys, then and there excepted.

195 (3.) And the court in charging the jury instructed them as follows:

Now, the question is, What you can gather from all that took place between them in the way of an agreement on the part of Mr. Wilson to pay these parties for their services; and, if so, how much and when was he to pay—upon the completion of these contracts after they were executed—some part—and, if so, how much; and more, if it should be received from the English company; and, if so, how much? If his liability was contingent upon receiving the money from the English company it must be said that he has not received it—that is to say, parties have paid in money only the $63,850 and some twenty-odd thousand dollars received from the sale of cattle, which is to be counted as payment, and then what was got under the sale of the chattel mortgage.

To the giving of which instruction to the jury by the court appellant, by his counsel, did then and there duly except.

(4.) That the court in instructing the jury charged them as follows:

If there was another and a different sum and a larger sum to be paid only when it should be received from the English company in excess of the sum of $225,000, then he cannot be liable for that, because he has not received that sum from the English company. I think that ought to make plain to you the grounds upon which you ought to proceed in arriving at a verdict in this case. If you find from the evidence that any sum was due to these plaintiffs upon the completion of this contract with this company—and by its completion I mean when it was executed and the property was passed over, and so on, delivered to the English company—then the plaintiff was entitled to that. If there was any sum to be paid if Mr. Wilson

should have received $225,000 and only any such amount over that sum as he should receive from the English company, then he cannot be liable for that, because he has not yet received it.

To the giving of which instruction appellant, by his counsel, then and there excepted.

(5.) That the court overruled the motion of appellant for a new trial in said cause; to which action of the court in overruling said motion appellant, by his attorneys, then and there duly accepted.

(6.) That the verdict of the jury is contrary to law.

(7.) That the verdict of the jury is contrary to the evidence and is not sustained and warranted by the testimony.

(8.) That the verdict of the jury is against the great weight and preponderance of the testimony.

Wherefore the plaintiff in error prays that the said judgment of said court be in all things reversed, annulled, and for naught held.

By T. M. PATTERSON,
C. S. THOMAS,
Att'ys for Plaintiff in Error.

196 [Endorsed:] 1893. Supreme Court of the United States. William J. Wilson, appellant, *vs.* William S. Everett, appellee. Assignment of error-. Filed Oct. 4, 1887. William A. Willard, clerk. Patterson & Thomas, attorneys for appellant.

197 UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the complaint, summons, demurrer, bill, and supplemental bill of particulars, answer, motion for new trial, judgment, bill of exceptions, bond, *præcipe*, and all orders of court heretofore filed and entered of record in said court and in a certain cause lately in said court pending, wherein William S. Everett, survivor, was plaintiff and William J. Wilson was defendant, as fully and completely as the same still remain on file and of record in my office.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this fourth day of October, A. D. 1887.

[Seal United States Circuit Court, District of Colorado.]

WILLIAM A. WILLARD, *Clerk,*
By —— ——, *Deputy Clerk.*

Endorsed on cover: Colorado C. C. U. S. No. 1268. William J. Wilson, plaintiff in error, *vs.* William S. Everett. Filed October 21, 1887.

Office Supreme Court U. S.
FILED
MAR 2, 1891
JAMES. H. McKENNEY,
CLERK.

IN THE

Supreme Court

OF THE UNITED STATES.

OCTOBER TERM, A. D. 1890.

WILLIAM J. WILSON,
Plaintiff in Error,
vs.
WILLIAM S. EVERETT,
Defendant in Error.

Error to the Circuit Court of the United States for the District of Colorado.

Brief and Argument of Plaintiff in Error.

T. M. PATTERSON.
C. S. THOMAS.
Attorneys for Plaintiff in Error.

DENVER:
NEWS PRINTING COMPANY.
1891.

should have received $225,000 and only any such amount over that sum as he should receive from the English company, then he cannot be liable for that, because he has not yet received it.

To the giving of which instruction appellant, by his counsel, then and there excepted.

(5.) That the court overruled the motion of appellant for a new trial in said cause; to which action of the court in overruling said motion appellant, by his attorneys, then and there duly accepted.

(6.) That the verdict of the jury is contrary to law.

(7.) That the verdict of the jury is contrary to the evidence and is not sustained and warranted by the testimony.

(8.) That the verdict of the jury is against the great weight and preponderance of the testimony.

Wherefore the plaintiff in error prays that the said judgment of said court be in all things reversed, annulled, and for naught held.

By T. M. PATTERSON,
C. S. THOMAS,
Att'ys for Plaintiff in Error.

196 [Endorsed:] 1893. Supreme Court of the United States. William J. Wilson, appellant, *vs.* William S. Everett, appellee. Assignment of error-. Filed Oct. 4, 1887. William A. Willard, clerk. Patterson & Thomas, attorneys for appellant.

197 UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the complaint, summons, demurrer, bill, and supplemental bill of particulars, answer, motion for new trial, judgment, bill of exceptions, bond, *præcipe*, and all orders of court heretofore filed and entered of record in said court and in a certain cause lately in said court pending, wherein William S. Everett, survivor, was plaintiff and William J. Wilson was defendant, as fully and completely as the same still remain on file and of record in my office.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this fourth day of October, A. D. 1887.

[Seal United States Circuit Court, District of Colorado.]

WILLIAM A. WILLARD, *Clerk,*
By —— ——, *Deputy Clerk.*

Endorsed on cover: Colorado C. C. U. S. No. 1268. William J. Wilson, plaintiff in error, *vs.* William S. Everett. Filed October 21, 1887.

Office Supreme Court U. S.
FILED.
MAR 2, 1891
JAMES. H. McKENNEY,
CLERK.

IN THE

Supreme Court

OF THE UNITED STATES.

OCTOBER TERM, A. D. 1890.

WILLIAM J. WILSON,
Plaintiff in Error,

vs

WILLIAM S. EVERETT,
Defendant in Error.

Error to the Circuit Court of the United States for the District of Colorado.

Brief and Argument of Plaintiff in Error.

T. M. PATTERSON.
C. S. THOMAS.
Attorneys for Plaintiff in Error.

DENVER:
NEWS PRINTING COMPANY.
1891.

IN THE

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM A. D. 1890.

WILLIAM J. WILSON,
Plaintiff in Error,

vs.

WILLIAM S. EVERETT,
Defendant in Error.

Error to the Circuit Court of the United States for the District of Colorado.

STATEMENT OF THE CASE.

This suit was commenced by the defendant in error, together with James M. Robinson as plaintiffs against the plaintiff in error as defendant, on the 28th day of January, A. D. 1886. It is an action on an account for services by said plaintiffs alleged to have been performed at the request of the defendant.

The complaint alleges that on "to-wit: the first day of November, A. D. 1885, the defendant became and was indebted to plaintiffs in the sum of $65,000 on an account for services by plaintiffs performed at the request of the defendant, at the City of Chicago, State of Illinois, and at the said District of Colorado, and at London, England, between the first day of June, 1883, and the first day of November, A. D. 1885, in and about the sale of certain lands and certain horned cattle and other personal property of the defendant; that defendant hath not paid the said sum of money nor any part thereof." (Folios 1-3.)

Upon motion the plaintiffs were required to file a bill of particulars. The first bill (folios 8-9) not being sufficiently specific, a second bill of particulars was filed, as follows:

"The said services were rendered under an oral employment of plaintiffs by said Wilson, by which plaintiffs were to receive for their commissions, in the first instance, five thousand dollars ($5,000) and all that the property should sell for over two hundred and twenty-five thousand dollars ($225,000). This employment of the plaintiffs was made some time in the summer or fall of 1883 and reiterated and renewed in Chicago about February, 1884. By a subsequent arrangement the defendant agreed to pay plaintiffs the further sum of ten thousand dollars ($10,000). Plaintiffs' services were rendered and negotiations carried on, partly by letter, partly by telegram and partly orally through agents of the plaintiffs in London, England. The time consumed in such correspondence and negotiations it is impossible to state. The same took place at intervals between the time of the first employment and the conclusion of the sale in the spring of 1884. Plaintiff Everett made one trip from Chicago to Denver in December, 1883, occupying about two weeks, the purpose of which was to confer with the defendant and settle and adjust the terms of an agreement to be executed by defendant, and to be submitted to the proposed purchaser. Plaintiff Everett and

Plaintiff Robinson both made another trip to Denver in February, 1884, remaining three weeks or thereabouts. There were oral negotiations had between plaintiffs and the agents of the purchaser, both in Chicago and in the State of Colorado These extended over several weeks. The number of hours or days consumed, or the number of hours or days consumed in the negotiations in London, cannot be stated.

(Folios 10-12.)

To the complaint and bill of particulars defendant filed general and specific denials. (Folios 14-15.)

On the 15th day of January, A. D. 1887, the death of the plaintiff, Robinson, was suggested, whereupon the following order was made:

"At this day comes the said plaintiff, William S. Everett, by R. T. McNeal, Esq., his attorney, and suggests to the Court here that since the last term of the court the said plaintiff, James M. Robinson, hath departed this life, whereby this action hath abated as to him, the said James M. Robinson."

And the defendant in error, William S. Everett, was therupon permitted to continue the prosecution of the said suit in his own behalf. (Folio 15.)

Upon the 18th day of January, A. D. 1887, a jury was empanelled to try the issues—(folios 16-17)—and upon the 21st day of January returned their verdict in favor of the plaintiff for the sum of ten thousand dollars ($10,000.) (Folio 19.)

Upon the 25th day of January, A. D. 1887, plaintiff in error filed his motion for a new trial in said cause, which said motion was overruled, and judgment was rendered for Everett in the sum of ten thousand dollars ($10,000) and costs, upon May 3, A. D. 1887. (Folios 20 to 23, inclusive.)

After the verdict was returned, upon the request of the plaintiff, Everett, the Court directed the jury to answer the following interrogatory:

"Did you include in your verdict the plaintiffs' claim for any excess over the sum of $225,000 denominated in the evidence the surplus or profits?"

And which said interrogatory, through the foreman, was answered as follows:

"Our understanding is that Mr. Wilson never received anything in excess of $225,000."

And the Court ordered the said question and answer to be entered of record in connection with the verdict of the jury. (Folios 19-20.)

Time was given to file a bill of exceptions. The assignment of errors made by the plaintiff in error for consideration by this honorable Court is as follows:

ASSIGNMENT OF ERRORS.

1. That the Court in instructing the jury charged the jury as follows:

"Now, with such an arrangement as this, obviously, if it was carried out upon those terms, it was going to be a question of some importance as to who was to wait for the deferred payments—if the plaintiffs were to wait or the defendant, Mr. Wilson, and whether Mr. Wilson would be responsible directly to the plaintiffs for this money, or whether he was only to stand in the relation of a sort of trustee for them and give them the money whenever he should get it from the English company; and, so far as I can see in the evidence, there is nothing very explicit upon that subject as to any understanding or agreement between them, unless it may be what occurred in Chicago in February, 1884, about the time these parties were coming over to look at the property.

"To which instruction by the court to the jury the appellant, by his attorneys, then and there duly excepted."

2. That the Court in instructing the jury charged the jury as follows:

"I think Mr. Everett says that then there was an express understanding that he was not only to have $50,000,

which was in the understanding and agreement of the parties up to that time, but that he was to have $10,000 more and $5,000 more, making $65,000 in all, and that this was all to be paid by Mr. Wilson if the contract should go on. I believe Mr. Wilson denies this.

"And to which instruction so given by the Court to the jury appellant, by his attorney, then and there excepted."

3. And the Court in charging the jury instructed them as follows:

"Now, the question is, what you can gather from all that took place between them in the way of an agreement on the part of Mr. Wilson to pay these parties for their services; and, if so, how much and when was he to pay—upon the completion of these contracts after they were executed—some part—and, if so, how much; and more, if it should be received from the English company; and, if so, how much? If his liability was contingent upon receiving the money from the English company it must be said that he has not received it—that is to say, parties have paid in money only the $63,850 and some twenty odd thousand dollars received from the sale of cattle, which is to be counted as payment, and then what was got under the sale of the chattel mortgage.

"To the giving of which instruction to the jury by the Court appellant, by his counsel, did then and there duly except."

4. That the Court in instructing the jury charged them as follows:

"If there was another and different sum and a larger sum to be paid only when it should be received from the English company, in excess of the sum of $225,000, then he cannot be liable for that, because he has not received that sum from the English company. I think that ought to make plain to you the grounds upon which you ought to proceed in arriving at a verdict in this case. If you find from the evidence that any sum was due to these plaintiffs upon the completion of this contract with this company—

and by its completion I mean when it was executed and the property was passed over, and so on, delivered to the English company—then the plaintiff was entitled to that. If there was any sum to be paid if Mr. Wilson should have received $225,000, and only any such amount over that sum as he should receive from the English company, then he cannot be liable for that, because he has not yet received it.

"To the giving of which instruction appellant, by his counsel, then and there excepted."

"5. That the Court overruled the motion of appellant for a new trial in said cause; to which action of the Court in overruling said motion appellant, by his attorneys, then and there duly excepted."

"6. That the verdict of the jury is contrary to law."

"7. That the verdict of the jury is contrary to the evidence and is not sustained and warranted by the testimony."

"8. That the verdict of the jury is against the great weight and preponderence of the testimony."

"Wherefore the plaintiff in error prays that the said judgment of said court be in all things reversed, annulled, and for naught held."

(Folios 194 to 196 inclusive.)

The contention of the plaintiff in error is, that the defendant in error should not have recovered more than the sum of $5,000, and that the sum allowed to him by the jury over $5,000 was because of the erroneous instructions by the Court, as set forth in the assignment of errors; and the whole argument herein will be based upon that proposition.

The discussion will necessarily embrace the assignments setting forth the instructions complained of, together with the sixth, seventh and eighth assignments, which in substance are, that the verdict of the jury is contrary to the law and the evidence, and is not sustained or warranted by the testimony.

THE TESTIMONY.

The evidence of the defendant in error, William S. Everett, was in substance as follows:

That he resided in Chicago. That he became acquainted with Mr. Wilson in 1883, Wilson being brought to him by the deceased, Robinson. That prior to meeting Wilson, Everett and Robinson had been attempting to sell some cattle ranch property in England, but because of misrepresentations their efforts in that direction were unavailing. That they met Wilson about this time, and as he had a ranch which practically filled the desires of those with whom they had been negotiating in England, they commenced negotiations with Wilson for his property. As a result of their negotiations Wilson at that time signed two agreements, one of which was for the especial benefit of Everett and Robinson, and was intended to show precisely what their rights were in the sale if they should effect one to the English parties, and the other was intended for use by Everett and Robinson in London in their attempt to dispose of Wilson's property. The agreement personal to Everett and Robinson is as follows:

EXHIBIT "A."

"CHICAGO, Aug. 17, '83.

"I hereby agree to sell to William S. Everett and J. M. Robinson, or their nominees, the ranch known as Circle Ranch, located on Republican river at a point where the States of Colorado, Kansas and Nebraska join, at and for the sum of two hundred and thirty thousand dollars ($230,000), less five thousand dollars ($5,000) allowed said Everett and Robinson for commissions, said sale to embrace said ranch with cattle and horses and everything that thereto belongs, and the said parties to have the refusal of said property for sixty days from this date, and such longer time as may be necessary to close said sale, provided that within said sixty

days there is a fair prospect of a sale being made satisfactory to me. (Signed) W. J. WILSON."
(Folios 30-31.)

The other agreement signed by Wilson is found at folios 32 to 35 inclusive, and is as follows:

EXHIBIT "B."

"Memorandum of agreement made this 17th day of August, A. D. 1883, between William J. Wilson of Denver, Colorado, U. S. A., and William S. Everett, attorney at law, of Chicago, Illinois, U. S. A., as the duly authorized agent to negotiate a sale of the property herein described, for and on behalf of the said William J. Wilson, represented hereinafter as the guarantor of the first part, and Thomas Fison Smith of 54½ Old Broad street, E. C., London, England, as trustee for and on behalf of a limited company proposed to be formed and registered under the name of the "New United States Cattle Ranch Company, Limited," herein known as the purchaser of the second part, and Arthur Robert Martin of 63 Queen Victoria street, and John Potter Wilkes of 54½ Old Broad street, and Louis Edward Potter Wilkes of same number, all of London, England, of the third part.

"1. The said agent and guarantor agree to sell the ranch known as 'Circle Ranch,' located on the Republican river and several of its tributaries in the States of Colorado, Kansas and Nebraska, at a point where the three States join in the northeast of Colorado, U. S. A.

"2. The said ranch contains one hundred and thirty-five (135) square miles of good pasture land, all fenced with a fence of good solid wood posts and three wires (barbed), and the entrances with iron gates.

"3. This ranch contains nine miles of frontage on the Republican river and fifteen (15) miles back from said river, through which flow several tributaries to said river, the land along the said river and streams (tributaries) all being

held in freehold title from the Government of the United States of America.

"4. Also all buildings, dwellings, branding irons, wagons, books, and records of said ranch, and all cattle thereon or connected therewith under the brand of said cattle ranch, which the books show to be about nine thousand (9,000), more or less, which herd is well graded American stock, free from Texas or Spanish pedigree, and which herd has thirty full-blooded Durham bulls, and one hundred and thirty-five (135) high-grade Durham bulls; also two hundred (200) American horses, most of which are trained saddle horses, together with saddles, bridles, and several sets of harness; also two mowing machines and patented horse hay-rakes.

"5. The guarantor makes the following statement of facts, which shall form part of this agreement on his part, to-wit:

"A. That in connection with this ranch and outside of that part under fence there is a pasture range of not less than thirty miles in extent in every direction, except on the south side, which is one hundred and fifty (150) miles or thereabouts, which range has been used by the owners of this ranch for seventeen years, and is now used as pasture land for the present herd hereinafter referred to.

"B. That said range and ranch are well watered, well sheltered, and covered with gramma, buffalo, blue-stem, and bunch grasses, and furnishes good pasture the year round.

"C. That said cattle have never been infected with disease of any sort, the cattle always being in a perfectly healthy condition.

"D. The cattle sold from this range in the year A. D. 1882, amounted to ninety-six thousand dollars ($96,000), and that many of them weighed over 1,300 pounds each.

"E. That the range, outside of that portion enclosed by fence before referred to, will pasture over 20,000 head of cattle without interfering with neighboring ranches or using that portion now under fence.

"F. The land along the streams and river is covered with timber.

"G. No cattle have been sold this year, and one thousand head (1,000) or thereabouts are now ready for market and will be reserved for the purchaser.

"6. This ranch has been owned and operated by the present owner, the said William J. Wilson, for the past six years, and the business has been managed by men of experience, who have kept books of record of number of cows, bulls, calves dropped each year, and cattle sold. The cattle will be sold and all pertaining to this ranch upon inspection thereof by the purchaser and an actual count of horses, cattle, and an inventory of all property thereunto belonging.

"7. A good title will be given to the purchaser for all realty and all cattle, horses and other property connected with and belonging to this ranch, and possession thereto upon satisfactory completion if sale and purchase under this agreement at and for the consideration of two hundred and seventy-five thousand dollars ($275,000), lawful money of the United States, one-half of which sum of $275,000 shall be cash and the remaining one-half, or one hundred and thirty-seven thousand five hundred dollars ($137,500), in one year from the date of purchase, to be secured by mortgage on said range at seven per cent. (7 per cent.) interest.

"8. It is also agreed that Edwin Wilson, an experienced cattle raiser, will, if desired by the purchaser, give one or more years' time in the management of the ranch at a reasonable price; that the guarantor and vendor, William J. Wilson, will at any time render such assistance as may be necessary to the successful management of the business of this ranch for the benefit of the purchaser, to wit: giving advice and directing how its business should be conducted.

"9. The property and title of William J. Wilson, the owner and vendor of this ranch, may be examined by an agent on behalf of the company at any time prior to the completion of the purchase, and the vendor shall give all facilities for that purpose.

"10. The Burlington and Missouri Railroad runs direct from Chicago through this ranch and has a station at or near the centre of the inclosure, as before mentioned.

"11. There is telegraphic communication within one hour of London, England.

"12. The climate is healthy for man and beast.

"13. The above statements made by the guarantor have been made in good faith, and facts therein stated, which, if upon inspection of the property herein mentioned and described are found to be not as represented, it is agreed that they shall be made good and correct by such deductions as shall be just and fair.

"14. All deeds of conveyance for the real estate herein mentioned or bills of sale for personal property shall be signed by William J. Wilson on his own behalf, and all moneys paid as the purchase price of this property shall be paid to said William J. Wilson at the City National Bank, Denver, Colorado, U. S. A.

(Signed) W. J. WILSON."

Both agreements were executed by Wilson on the same day. It will be observed by the terms of the first agreement Wilson is to sell to Everett and Robinson his ranch and other property for the sum of $230,000, less $5,000 allowed said Everett and Robinson for commissions, while, by the terms of the second agreement, the said Wilson agrees to sell to Thomas Fison Smith, of London, as trustee, for and in behalf of a company proposed to be formed under the laws of Great Britian in the name of the "New United States Cattle Ranch Company, Limited," for the sum of $275,000, one-half to be cash and one-half in one year from the date of purchase.

The testimony of Mr. Everett discloses that this second agreement was made by Wilson to enable Everett and Robinson to sell his property for $275,000, if they could, out of which he was to receive the sum of $230,000, less $5,000 commission. In other words, Mr. Wilson was to

sell his property to Everett and Robinson at any time within the sixty days from the date of the agreement for the sum of $230,000; in the meantime they were to attempt a sale of it to the English parties for $275,000. If they made the purchase from Wilson he was to pay them $5,000 as commissions out of the $230,000, and they were to have of the purchase price from the English company the difference between the $230,000 and the $275,000, or $45,000, making a total of $50,000; but while the $5,000 were to be paid as commissions by Wilson, the $45,000 were to be received by Everett and Robinson from the English purchasers and be theirs, Wilson in no manner becoming responsible for the payment of that sum unless it was first actually paid to him, but Everett and Robinson, as the agents of Wilson, were given the right to negotiate the sale of the property to the English parties for the larger sum mentioned. Out of that sum they were to pay to Wilson $230,000, and Wilson pay them back the $5,000 commissions.

The following question propounded to Mr. Everett by his counsel and his answer will show clearly what the understanding was at that time:

"Q. This (exhibit B) bears the same date as the first one read, specifying that the purchase price was $230,000; in this the purchase price is specified at $275,000. What explanation can you give of that; what is the occasion of this $275,000 being specified?

"A. Mr. Wilson declined to pay such commission, as we believed we should have, but insisted upon us making whatever we wished over and above his price as a profit, and said all that he wanted was $225,000, and we might make whatever we saw proper; he would aid us in doing it; his property was put very low so we might; he represented he believed he had 9,000 head of cattle—he guaranteed 6,000; we could with safety put a very large profit on them if we wanted to, and we suggested $50,000; he acquiesced in it; not only said we might make that amount, but might make a million if we could; he would not object." (Folio 36.)

The testimony of Everett further shows that with these agreements they attempted to negotiate the English sale; they succeeded, but not upon the terms mentioned in the Wilson agreements, and the English parties prepared contracts and returned them to the United States which they desired Wilson to sign.

The memorandum returned by the English parties is between William J. Wilson, called the vendor, William S. Everett, called the guarantor, and Thomas Fison Smith, for and on behalf of a limited company proposed to be registered as the purchaser, and Arthur Robert Martin, John Potter Wilkes and Louis Edward Potter Wilkes, of the fourth part. By this memorandum the purchase money was fixed at the sum of $410,000, payable $292,000 in cash; as to $117,400, it was to be paid in fully paid up ordinary shares of said company; of the cash price $68,850 was to be paid within two months of the signing of the agreement by Wilson, and the remaining cash was to be paid as stipulated in the agreement.

This agreement was formally signed by Wilson, but not until it had been materially modified. However, the purchase price fixed in the agreement remained the same, but some different times and terms of payment were made. This agreement is found from folios 37 to 48 inclusive.

This latter agreement is but a modification of Exhibit "B" and in no manner changes the terms in Exhibit "A."

However, Exhibit "A" was abrogated at the time Wilson signed the London memorandum, as is evidenced by the agreement executed between Everett and Wilson, December 15th, 1883, (folio 62) which said agreement is as follows:

EXHIBIT "D."

DENVER, COLO., Dec. 15, 1883.

WHEREAS, a certain contract or contracts have heretofore been entered into between William J. Wilson, of Denver, Colorado, of the one part, and William S. Everett

and J. M. Robinson, Esqs., of Chicago, Ill., and each of them, of the other part, for the sale of the Circle Ranch, horse and cattle, belonging to said Wilson; and

WHEREAS, a contract has this day been executed by the said Wilson, as vendor, and the said Everett, as agent and guarantor of the said Wilson, for the sale of said ranch and cattle to the New U. S Cattle Ranch Company of London, England, and which last contract supersedes all other and prior contracts in which the names of said Everett and Robinson or either of them appear.

Now, therefore, all contracts, agreements, obligations or other liabilities heretofore entered into, and in which the names of said Everett and Robinson or either of them appear are cancelled and held for naught, and the said Wilson is hereby released from same; the commissions to said Everett and Robinson to be $5,000 and a reasonable amount above said sum as may be just and fair, according to the advantage said William S. Everett may prove to be in having parties purchaser receive the property sold under and by virtue of contract of sale made this day as we may agree upon.

(Signed) WILLIAM S. EVERETT,
W. J. WILSON.

The provision in said contract commencing with "Now, therefore," was intended to and did in fact abrogate the agreement Exhibit "A," and all others in which the name of Everett or Robinson appeared, excepting the memorandum executed the same day by Wilson of a sale to the English parties.

This action left the agreement between Wilson upon the one part and Everett and Robinson upon the other as to the compensation to be paid the latter in parol, except that the promise to pay the $5,000 commissions was maintained in writing by the terms of the last contract with this addition, that a reasonable amount above said sum as may be just and fair, etc., was to be paid.

In addition to the written contracts hereinbefore referred to, Plaintiff Everett maintained that on the second day of February, 1884, it being after the contract with the English parties was signed by Mr. Wilson, Wilson entered into a verbal contract with him to pay him the sum of $10,000 additional, provided he would come to Denver from Chicago with the English parties to assist him in negotiating the sale mentioned in the contract he had already signed. His testimony upon that subject is as follows:

"Q. Were there any negotiations or further transactions that took place between you?

"A. At the time this contract was signed you just read to the jury that was the third contract signed by Mr. Wilson, the first one to Robinson and myself for two hundred and twenty-five thousand dollars, and then one signed at the same time, that had been sent to Europe, for two hundred and seventy-five thousand dollars, and this one of four hundred and ten thousand dollars. Shortly after this third contract had been signed and ready to be delivered to me, Mr. Wilson presented a little stipulation in Mr. Patterson's office, which I signed, and which I understood then and understand now, was intended to cut off any further operations or negotiations on the prior contract, and to confine whatever operations we might have in the future to this third contract, the one you just read.

"I did not understand it then; don't know from the language of it that it was intended to affect our brokerage or profits—our commission; indeed, Mr. Wilson said at that time it would not; then, when Mr. Wilson appeared in the office, in February, I told him about these parties coming. I wanted him to sign a contract which would fix what we had before agreed upon as our share of the profits and commissions—as I held, that contract cut off all former contracts—give us a commission, but he declined to do that; he said he would not sign any paper whatever without consulting his attorneys, and I either gave him a written

letter or sent it to him, I don't just remember which, and my relations with Mr. Patterson had been very pleasant in the work we had been doing. I addressed him a full letter stating my position in the matter, so that he might have a full understanding from both parties. I received a letter from Mr. Patterson in reply, which is here, entertaining about the same idea I had of that contract, which I still entertain. Mr. Wilson insisted upon myself and Mr. Robinson accompanying the English gentlemen to Denver. I did not think it necessary for myself to come out; indeed I was engaged in my profession. I could not very well leave the office at that time, not without some loss. I thought Mr. Robinson would be sufficient. I felt it was nothing but to see the matter closed up and felt satisfied that he would pay over and give obligations which would be satisfactory for the amount he had agreed to pay us, but he insisted on my coming, and he said he would give $10,000 additional if I would come out and close up the sale. I asked him, then, if he would put that in writing, and I asked him if he meant $10,000 in addition to the $5,000 commission and in addition to the $50,000 profits we had in the sale; he said, yes. He said he would even do better than that; he said he would divide whatever he would make in the sale over and above that. I did not understand what that meant exactly, and so asked him to explain what difficulties there were in the way; whether he could not carry out the terms of his contract. He said yes, but he said that they might, may be want the cattle counted, and the cattle could not be counted for two or three months under the laws or rules of the Cattle Association, or something or other, but he wanted the sale closed up then, and I said that he had obligated himself to give a bond, and he had obligated to come to a matter of the time, and I thought the matter could be carried out, but he insisted on my coming out, and as an additional inducement after offering the ten thousand and the five thousand and the fifty thousand, he says: Mr. Everett, I will give you a fine pair of carriage

horses if you will come out in addition to that. I didn't object to the carriage horses; I didn't know but the gentlemen,—I came out; I never got the carriage horses and never got a cent of my expenses. (Folios 48-50.)

This is the only additional contract or agreement upon which Everett based his claim for any sum of money over and above the $5,000 commissions and the sum of money which he was to receive over $230,000 of the price for which the property might be sold.

Plaintiff in error denies that any such contract was made, his version of the talk in Chicago being as found in his testimony from folios 132 to 134:

"Q. State to the jury in what connection, if any, the sum of $10,000 was ever raised between you?"

"A. It was raised in Chicago when we made this first trade in regard to range delivery. They spoke of having the parties receive the cattle. We debated that subject some time. It was common in delivering cattle; it had been done by a great many. The cattle were received range delivery and it was very profitable, as the cattlemen all know, and I said to these men that I doubted very much if they could get the parties to receive the cattle range delivery, for people who had that much money to invest were careful about investing, and would not buy something without seeing it; but Mr. Everett insisted that he would have the parties receive the cattle range delivery, repeated it a great many times in my presence, and I told him if he did I would allow him $10,000 for having them receive the cattle range delivery; that was the only connection I ever heard of any other commissions in any other way."

When Mr. Everett was cross-examined he scarcely denied the terms of the ten thousand dollars agreement as stated by Mr. Wilson, his cross-examination upon that subject being as follows:

"Q. Did you in any conversation with me ever make any statement to me that Mr. Wilson had ever agreed to give you $10,000?"

"A. I don't know that I did."

"Q. Did you say anything to Mr. Wilson about that $10,000 after you came to Denver?"

"A. Yes, sir; Mr. Robinson and myself both spoke."

"Q. Let me ask you if the $10,000 you referred to—did it not grow out of this? Mr. Wilson was very anxious to have the cattle accepted range delivery and he wanted you to use your influence to get the cattle accepted range delivery, so that he would not be put to the expense and trouble of gathering the cattle. Did not he estimate the cost of gathering the cattle at $10,000, and did he not say to you, if you can induce the English people to receive these cattle range delivery, and not put me to the expense of delivering—gathering them up—I would just as soon pay you the amount it would cost, which would be about $10,000, as to pay the money to them. Was not that—"

"A. What you say was in part as I recollect it, but he said to me that he wanted a range delivery at that time; that he feared they would want a count at that time, which was early in the spring—in February or March—and that he could not have a round-up until May or June—May, I think he said—and he wanted the matter closed before that time, but he said to me that a delivery at that time would cost him $20,000 or $25,000, and he said he would be willing to divide it."

"Q. In talking to you about the $10,000 was not the particular thing you were to do, after you came to Denver, to use your influence to get a range delivery from the English people; was not that what you came to Denver for?"

"A. That is not my recollection of it."

"Q. Do you say it is not?"

"A. I am only speaking from my recollection."

"Q. You won't speak any more positively?"

"A. No."

"Q. Mr. Wilson did speak to you in Chicago about a range delivery?"

"A. He did, sir; that it would cost him $20,000 or $25,000."

* * * * * * *

"Q. Was not this $10,000 to be paid to you if you would come to Denver, or if you would succeed without coming to Denver, if you would get for him these English parties to receive these cattle range delivery?"

"A. There was something of that kind said, I admit; he said that if I would come and the sale would go through he would give me $10,000."

"Q. And with range delivery?"

"A. That is not my understanding."

"Q. You would not swear positively that was not the fact?"

"A. My best recollection is it was not."

(Folios 70-73.)

While there is a great deal of other testimony in the record, the foregoing statement covers the real matters in issue upon the trial.

The testimony further shows that of the entire purchase price Mr. Wilson received something less than $70,000; that the notes which the English parties executed for the deferred payments were not paid at maturity and Mr. Wilson was compelled to foreclose the chattel mortgage given to secure the notes; and that the sum received by him from all sources, including the cash money paid when the contract was completed, did not amount to the sum of $225,000.

The testimony of Mr. Everett cannot be read without a clear conviction resulting that except the sum of $5,000 commissions he was to receive no additional sum until after Mr. Wilson had received the $225,000. Indeed the Court in charging the jury so asserted the result of all the testimony. That being true, it is inevitable that Everett should have recovered but the sum of $5,000, and if there was enough in the testimony to sustain the claim of Everett for

$10,000 additional, then it must have been for the sum of $15,000.

It is proper to add that the cattle were not received by the English purchasers range delivery, hence if the contention of Mr. Wilson upon that subject is to be accepted as true, and there is scarcely room to doubt its truth, Everett was entitled to nothing beyond the sum of $5,000 commissions.

The more critically the testimony of Mr. Everett may be examined the clearer it will appear that at the time, when the contract for the sale of the property to the English parties was executed, there was no change in the agreement between the parties as to the circumstances under which the surplus over $225,000 was to go to the plaintiff. The final agreement was simply a modification of the first agreements entered into between the parties at Chicago, by the terms of which Wilson was to receive $230,000, paying Everett and Robinson out of that sum $5,000, and Everett and Robinson were to retain for themselves from the English parties whatever sum was over and above $230,000 excepting such portions of it as under the terms of the contract went to certain other English parties mentioned in it.

ERROR OF THE COURT.

The error committed by the Court consisted, principally, in instructing the jury that the contention of the plaintiff was that Wilson was to pay to him and Robinson whatever sum was contracted by the English parties in excess of the sum of $225,000, and that he was entitled to that excess from Wilson simply upon the execution of the contract and without reference to the question whether Wilson ever received the $225,000 for which he originally agreed to sell his property to Everett and Robinson, or not.

The Court will observe as it reads the portions of the instructions of the Court assigned as error, that the jury were left to determine whether or not Everett was entitled

to a judgment for that excess, or whether or not it was as claimed by Wilson; and as all of the papers executed show, and as the testimony of Everett and his witnesses also show that Everett and Robinson were to be entitled to the excess over $230,000 only after Wilson had received that sum. The Court should have instructed the jury in terms that, so far as the surplus of the purchase price over $230,000 was concerned, Everett was entitled to recover no portion of it in that action, for the reason that it was clearly shown by the testimony the $225,000 had never been received by him.

Upon what basis can the verdict of $10,000 stand? If the jury determine the contention as the Court stated in its instructions Everett claimed it, then the verdict *ex necessitate* must have been for at least six times the sum allowed. It follows that the jury must have concluded that Wilson's statements, so far as the right of Everett to the surplus was concerned, were true.

Everett was entitled to a verdict for the sum of five thousand dollars, as that is the sum fixed by all the agreements as the commission Everett and Robinson were to receive for effecting the sale. If they were entitled to receive any additional sum that sum must have been $10,000, upon the agreement asserted by Everett to have been made in February, 1884

Each sum claimed by the plaintiff was upon an express contract for such specific sum. Plaintiff in error does not take issue with the *sums* claimed upon these agreements by Everett. He said that as to the five thousand dollars commissions, he was entitled to receive it. He says as to the $10,000, no such contract was ever made as asserted by Everett upon his examination in chief; that he never agreed to pay Everett any sum for coming to Denver to assist in perfecting the sale, but that he did agree to pay him $10,000 if he would come to Denver and succeeded in inducing the purchasers to accept the cattle range delivery.

The cattle were not accepted range delivery. There is no dispute between them so far as the $10,000 is concerned, as to amount. If there was any agreement which entitled plaintiffs to recover, it was for the sum of $10,000; hence the jury could not have regarded the alleged agreement concerning the $10,000 as having been maintained by Everett. Then where did they find evidence of any kind to justify them in adding the sum of $5,000 to the $5,000 commission which Wilson admitted he agreed to pay? It could not have been in the surplus over the $230,000, for that was a fixed and determinate sum by the third contract, and would have amounted to more than ten times the $5,000 which the jury added to the commission.

It must be apparent to the Court that by this verdict the jury, without testimony and without right, added five thousand dollars to the only sum which the plaintiff was entitled to recover. We respectfully submit to this honorable Court,

First: That the instructions given by the Court as set forth in the assignments of error were erroneous.

Second: That the verdict of the jury was contrary to the evidence and not warranted or sustained by the evidence, and that it was in disregard of the facts proven by the testimony.

For these resons we respectfully pray this honorable Court that the judgment of the Court below should be reversed and the case remanded for further proceedings.

T. M. PATTERSON,
C. S. THOMAS,
Atty's for Plaintiff in Error.

Office Supreme Court U. S.
FILED,
MAR 24 1891
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 268.

WILLIAM J. WILSON, PLAINTIFF IN ERROR,

vs.

WILLIAM S. EVERETT, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

E. T. WELLS,
R. T. McNEAL,
Attorneys for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

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STATEMENT OF THE CASE.

This action was originally instituted by defendant in error and J. M. Robinson, of Chicago, Illinois, against William J. Wilson, of Colorado. Mr. Robinson having subsequently died, the suit was prosecuted to judgment by William S. Everett, survivor and sole plaintiff. The complaint sets out simply an alleged indebtedness on the part of Wilson in the sum of sixty-five thousand dollars for services performed at his request, in various places, between June, 1883, and November, 1885, in and about the sale of certain lands

and cattle of defendant (Rec., p. 1). There were afterwards filed bills of particulars (Rec., pp. 5 and 6), by which the grounds of the claim are definitely stated to be that it was agreed that plaintiffs were to receive a commission in the first instance of $5,000 and all in excess of $225,000 for which they might sell the property, and that by a later agreement they were to receive the further sum of $10,000 for special services in going to Denver and assisting in consummating the sale. The answer is a general and specific denial.

At the trial there was no issue or question made as to the fact that Everett and Robinson had been employed by Wilson to sell his ranch and stock, or that they, after correspondence, negotiation, travel, and expense, found a purchaser for the property; nor was it denied that the property had been sold and delivered to such purchaser at an acceptable price. The only contention was as to what compensation they were to receive. The evidence on the part of plaintiff tended to prove that Wilson's price for his property was $225,000, and that he was willing to pay absolutely no more than $5,000 commissions; but it was finally agreed that Everett and Robinson might have as their compensation, in addition to the $5,000, the excess over $225,000 for which they might sell the property, and that after considerable delay and failure to agree on the details of the sale to parties in England, with whom Everett and Robinson were negotiating, some of whom were about to visit this country and inspect the property, it was further agreed that if Everett and Robinson would accompany said parties to Colorado and consummate the sale the further sum of $10,000 should be paid as commissions. The promise to pay $5,000 absolutely seems not to be denied by Wilson, nor can it be fairly said that he denies that Everett and Robinson were entitled to the excess over $225,000 for which the property should be sold. His evidence tends to show, however, that he was not to pay this excess till he should receive it, and that he had not, in fact, received it or any part of it at the time this suit was

instituted. As to the further sum of $10,000, his evidence tends to prove that he promised or offered that only on condition that Everett and Robinson should induce the purchasers to accept the cattle range delivery—without actually counting them—and it is not claimed there was such delivery, nor was there any attempt to secure it.

Everett and Robinson very early in the negotiations sent to the English parties a proposed written contract to sell the property for $275,000. This was not signed, but a substitute was sent over by the promoters there accepting the price of $275,000 to Wilson, but adding $135,000 to the gross price, making it $410,000, $117,400 of which were to go to the promoters for their services, to be paid in the stock of the company to be formed, and $17,600 were to be paid to certain other parties in England for their services, leaving $275,000 as the price to be received by Wilson. This particular contract was not signed, but in December, 1883, Everett went to Denver, and he and Wilson, after considerable negotiations, agreed upon a contract of sale on these precise terms as to price and its distribution, but differing in some other details, and this contract (Rec., p. 32–37) was signed by Wilson and Everett as his guarantor, and sent to the English parties. Shortly after receiving this some of the English parties came to this country and went to Colorado, accompanied by Everett and Robinson, and after some further changes in the contract, none of them affecting the rights of Everett and Robinson in any way, it was executed by all parties, and the property was, in April, 1884, transferred to the purchasers. In the summer or autumn of the following year Wilson, for an alleged default of the English company, took possession of the property under a mortgage given him to secure deferred payments, and disposed of it all except a part of the lands, receiving from the sale and previous payments, as he claimed, only $180,000 to $190,000 of the $225,000, which he claimed should have been first received before any liabil-

ity to Everett and Robinson could attach on account of the excess or surplus. This statement, we apprehend, will enable the court to determine the matters in controversy between the parties and tried by the jury and the propriety of any direction given them by the court.

A verdict was returned in favor of plaintiff for $10,000, upon which a judgment was entered, to reverse which defendant brings this record here.

ARGUMENT.

It is always embarrassing to attempt to anticipate and meet what may be contended for by an antagonist in a lawsuit, but it is especially so in this case, for the reason that we cannot surmise what legal or plausible objection can be urged in this Court under any one of the four assignments of error to be found in the record (pp. 114–'16). There are other errors assigned, but we do not suppose this Court is expected to consider them, and we shall therefore not discuss them.

It is a notable fact that the record discloses no objection or exception to any ruling of the trial court in receiving or excluding testimony, nor is there any complaint made that the court refused to grant any prayer by plaintiff in error for a specific direction to the jury.

1st. The first alleged error is that the court erred in that part of his direction which tells the jury:

"Now, with such an agreement as this, if it was carried out upon those terms, it was going to be a question of some importance as to who was to wait for the deferred payments—if the plaintiffs are to wait or the defendant, Mr. Wilson—and whether Mr. Wilson would be responsible directly to the plaintiffs for this money, or whether he was only to stand in the relation of a sort of trustee for them and give them the money whenever he should get it from the English company; and so far as I can see in the evidence there was nothing very explicit upon that subject, as to any under-

standing or agreement between them, unless it may be what occurred in Chicago in February, 1884, about the time these parties were coming over to look at the property."

At the time alluded to Everett asked Wilson to sign a written memorandum (Rec., p. 39) to the effect that the $50,000 in the contract in excess of $225,000 was not his, but for Everett and Robinson, which Wilson declined to sign without his counsel's advice, because he thought there might be "something technical in it." Wilson's testimony was that he understood he was not to pay over this excess till he actually received it. Everett and his son testified that that was not their understanding, and claimed that this, like the other measures or items of compensation, was payable when the sale was consummated. The direction complained of contains no proposition of law whatever and merely calls the jury's attention to the matter of fact in controversy and the absence of anything very explicit or satisfactory in evidence on the subject. The direction could not have misled the jury to the prejudice of plaintiff in error, for it is not only manifest from the amount of the verdict that they did not allow plaintiff's claim for this $50,000, but the record shows that when questioned in open court, under the direction of the court, as to whether they included in their verdict the claim for $50,000, they answered, "Our understanding is Mr. Wilson never received anything in excess of $225,000" (p. 12). This clearly indicates Wilson's testimony as to his understanding was accepted by the jury. Furthermore, in the concluding sentence of that portion of the charge which is the basis of the third and fourth assignment of error the court, in effect, directs the jury that if they find the $50,000 was only to be paid by Wilson after he had received it in excess of $225,000, he could not recover that, because he had not received it.

We submit, therefore, not only that there is no vice in the direction first assigned as erroneous, but if there were, it is

manifest it did not prejudice plaintiff in error, because the whole of that part of the claim discussed in it was disallowed by the jury, under the direction of the court, in another part of the charge, that if they should find Wilson was to pay it only after receiving it, he was not liable for it.

2d. The next alleged error, as set out in the second assignment, is that the court said to the jury:

"I think Mr. Everett says that then there was an express understanding he was not only to have $50,000, which was the understanding and agreement of the parties up to that time, but that he was to have ten thousand more and five thousand more, making sixty-five thousand in all, and that was all to be paid by Mr. Wilson if the contract should go on. I believe Mr. Wilson denies this."

This is simply a statement of what the respective parties claimed or contended for before the jury, as the court understood them, and it is substantially a correct statement. There is no intimation as to whether the claim of the one or the other was or was not sustained by the evidence, and if it misstated the contentions of the parties, certainly this is not ground for reversing the judgment. At the request of Wilson's counsel the court gave the usual direction as to the burden of proof, &c., and concluded with the declaration: "The force and strength of the evidence is entirely as it shall stand with you and affect your judgment." Again, we say there is no proposition of law contained in this direction, and absolutely nothing that could have misled the jury or prejudiced the defendant in any respect.

3d. Supplying an omission from the charge as given, which is in brackets, the third assignment of error is the giving of this portion of the charge:

"Now, the question is, what you can gather from all that took place between them in the way of an agreement on the part of Mr. Wilson to pay these parties for their services.

[Was there any agreement to pay them for their services?] and, if so, how much, and when was he to pay? Upon the completion of the contracts after they were executed, some part, and, if so, how much, and more of it should be received from the English company; and, if so, how much? If his liability was contingent upon receiving the money from the English company it must be said that he has not received it—that is to say, parties have paid in money only $63,850 and some twenty-odd thousand dollars received from the sale of cattle, which is to be counted as payment, and then what was got under the sale of the chattel mortgage."

Without the aid of counsel for plaintiff in error we confess our inability to discover anything whatever, even a suggestion, in this instruction which can be made the basis of a plausible objection or complaint by him. We cannot discuss it.

4th. The last assignment which we shall notice is the fourth, which complains of this direction:

"If there was another and different sum and a larger sum to be paid only when it should be received from the English company, in excess of the sum of $225,000, then he cannot be liable for that, because he has not received that sum from the English company. I think that ought to make plain the grounds upon which you ought to proceed in arriving at a verdict in this case. If you find from the evidence that any such sum was due to these plaintiffs upon the completion of this contract with this company—and by its completion I mean when it was executed and the property passed over, and so on, delivered to the English company—then the plaintiff was entitled to that. If there was any sum to be paid if Mr. Wilson should have received $225,000 and only any such amount over that sum as he should receive from the English company, then he cannot be liable for that, because he has not yet received it."

We are equally embarrassed in our attempts to discover error either in statement or suggestion in this direction, without the assistance of counsel.

It will be noticed that the directions complained of in all these assignments of error, except the second, deal principally if not wholly with the excess or surplus over $225,000, and if every line and sentence in them were erroneous they could not be made the subject of complaint or ground for reversing the judgment for the reason that that portion of the claim of Everett and Wilson was disallowed, and therefore defendant in error could not have been prejudiced by them.

Further assignments are made on the grounds (5) that the court overruled the motion for a new trial; (6) that the verdict is contrary to the evidence; (7) that the verdict is contrary to law; (8) that the verdict is against the "great weight and preponderance of the testimony." We assume that the Court will not consider or be asked to conconsider these assignments of error, as they are not properly grounds of review in this Court, and we therefore shall not notice them.

We venture the opinion that this Court has not looked into a record so free from grounds of complaint on the part of a plaintiff in error as is this. The issues are peculiarly for the jury, and all the questions have been fairly submitted to them and determined, we think, favorably to plaintiff in error. His attorneys are familiar with the rules and practice of this Court, and in ability stand, if not at the head, in the front ranks of the profession in their State; and the only object, it seems to us, in bringing this case here was to postpone the enforcement of the judgment. We therefore submit that the judgment should not only be affirmed, but that defendant in error is entitled to the benefit of the second section of rule 23, and that ten per cent. damages should be awarded him on account of the delay and costs to which he has been subjected. This Court in *Amory vs. Amory* (91 U. S., p. 356) has declared that the only power it has to prevent frivolous appeals and writs of error is that of awarding damages; and Chief Justice WAITE, speaking for

the Court, says that it will not hesitate to exercise the power in all cases where its jurisdiction has been invoked merely to gain time. We invoke the application of this salutary and just rule to this case as a measure of simple justice to defendant in error.

Respectfully submitted,

E. T. WELLS,
R. T. MCNEAL,
Attorneys for Defendant in Error.